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and all others similarly situated and aggrieved

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CHRIS MOTT, an individual, on behalf of
himself and all others similarly situated and
aggrieved,

Plaintiff,

vs.

JACKS NW, LLC, a California corporation;
JACKS PH, LLC, a California limited liability
company; JACKS SB, LLC, a California
limited liability company; JACKS SM, LLC, a
California limited liability company;
MARCOVICI IP LLC, a California
corporation; MARCOVICI HOLDINGS,
INC., a California corporation; and DOES 1 to
10, inclusive,

Defendants.

Case No.: **23CV028122**

**CLASS ACTION & PAGA REPRESENTATIVE
ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO FURNISH TIMELY AND
ACCURATE WAGE STATEMENTS;**
- (6) FAILURE TO PAY ALL WAGES UPON
SEPARATION;**
- (7) FAILURE TO MAINTAIN RECORDS;**
- (8) VIOLATION OF CALIFORNIA'S UNFAIR
COMPETITION LAW ("UCL"), CAL. BUS.
& PROF. CODE § 17200, ET SEQ.; AND**
- (9) CIVIL PENALTIES FOR VIOLATIONS OF
LABOR CODE, PURSUANT TO
CALIFORNIA'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"), §§ 2698, ET
SEQ.**

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff Chris Mott (“Plaintiff” or “Mott”), on behalf of himself and all others similarly situated
3 and aggrieved, by and through his attorneys, Shegerian & Associates, Inc., hereby files this Class Action
4 and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Complaint against
5 Defendants Jacks NW, LLC, a California corporation; Jacks PH, LLC, a California limited liability
6 company; Jacks SB, LLC, a California limited liability company; Jacks SM, LLC, a California limited
7 liability company; Marcovici IP LLC, a California corporation; Marcovici Holdings, Inc., a California
8 corporation; and DOES 1 through 10 inclusive, (collectively, “Defendants”), and states as follows:

9
10 **I. INTRODUCTION**

11 1. Plaintiff brings this class action on behalf of himself and on behalf of a class defined as
12 all hourly, nonexempt employees of Defendants JACKS NW, LLC doing business as JACK’S
13 RESTAURANT AND BAR (defined and used throughout this Complaint as meaning JACK’S
14 RESTAURANT with all other defendants named herein) in California at any time during the time period
15 beginning four years prior to the filing of this Complaint through the present (“Class Period”), and on
16 behalf of all Aggrieved Persons who worked for JACKS NW, LLC dba JACK’S RESTAURANT AND
17 BAR as hourly, nonexempt employees in California at any time during the period beginning one year
18 prior to the initial PAGA letter (defined below) through the present (“PAGA Period”).

19 2. Defendants own and operate at least four restaurant locations in California. Defendants
20 provide patrons a dining and bar experience.

21 3. Defendants’ policy and practice are to deny earned wages, including premium and
22 overtime pay, to their hourly, nonexempt employees at Defendants’ locations in California. Defendants
23 do not provide their employees with legally compliant meal periods and rest breaks or premium pay in
24 lieu thereof. Additionally, Defendants require their employees to be present and to perform work in
25 excess of eight (8) hours per day and/or forty (40) hours per work week by mandating that these
26 employees perform work off-the-clock, including but not limited to performing work during meal
27 periods, rest breaks, and after clocking out at the end of their shifts.

28 4. Moreover, Defendants fail to timely compensate employees for all wages earned upon

1 separation, and fail to properly and accurately calculate minimum wages and overtime wages and report
2 wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of
3 himself and other hourly employees of Defendants to recover unpaid wages, overtime compensation,
4 penalties, interest, injunctive relief, damages, and reasonable attorneys' fees and costs.

5 5. Defendants' deliberate failure to pay their hourly employees their earned wages and
6 overtime compensation violates the California Labor Code and the California Business & Professions
7 Code.

8 6. Plaintiff brings a class action under the California Code of Civil Procedure section 382
9 against Defendants on behalf of all nonexempt hourly employees of Defendants in California for failing
10 to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid minimum
11 wages, unpaid overtime wages, failing to provide timely and accurate wage statements, waiting time
12 penalties, and other related penalties and damages under the California Labor Code and California
13 Business & Professions Code.

14 **II. JURISDICTION AND VENUE**

15 7. Venue lies properly with this Court, as it is the place where at least one Defendant resides,
16 is incorporated or has its principal place of business, or a substantial amount of the events which gave
17 rise to this suit occurred and/or a cause of action arose.

18 8. This Court has jurisdiction over this matter because Defendants are licensed to do
19 business in California, regularly conduct business in California, and committed and continue to commit
20 the unlawful acts alleged herein in California.

21 8. Venue is proper in this Court pursuant to California Code of Civil Procedure
22 section 395.5. Defendants own and operate JACKS NW, LLC dba JACK'S RESTAURANT AND BAR
23 located in Newark, California, which is in Alameda County, State of California, which is where Plaintiff
24 and some putative Class Members and Aggrieved Employees have worked for Defendants. Defendants'
25 obligation to comply with the California Labor Code and California Business & Professions Code and
26 their liability for failing to do so therefore arise in, among other counties, the County of Alameda.

27 **III. PARTIES**

28 10. Plaintiff Christopher Mott is and was a resident of Newark, California located in Alameda

County. Plaintiff was employed by Defendants as an hourly nonexempt restaurant employee in the position of server from approximately April 16, 2022 through November 27, 2022 at Defendant Newark location at 1029 Newpark Mall Road, Newark, California 94560. Plaintiff typically worked four (4) to five (5) days per week for 5.5 to 7.5 hours per day and about 27 to 37 or more hours per week. Plaintiff was earning \$15.00 per hour at the time of separation.

11. The following defendants (“LLC Defendants”) are for-profit California limited liability companies doing business in the State of California, operating in the State of California, availing themselves of the privileges and obligations associated therewith and have a principal place of business in California¹:

- a. JACKS NW, LLC is a California limited liability company with its principal place of business in San Mateo, California in San Mateo County located at 1700 South El Camino Real, Suite 210, San Mateo, California 94402. Its business operations are located at 1029 Newpark Mall Road, Newark, California 94560;
- b. JACKS PH, LLC is a California limited liability company with its principal place of business in San Mateo, California in San Mateo County located at 1700 South El Camino Real, Suite 210, San Mateo, California 94402; Its business operations are located at 60 Crescent Drive, Suite A, Pleasant Hill, California 94523
- c. JACKS SB, LLC is a California limited liability company with its principal place of business in Pleasant Hill, California in Contra Costa County located at 42 Hamar Street, Pleasant Hill, California 94523; Its business operations are located at 1050 Admiral Court, Suite A, San Bruno, California 94066; and
- d. JACKS SM, LLC is a California limited liability company with its principal place of business in Pleasant Hill, California in Contra Costa County located at 42 Hamar Street, Pleasant Hill, California 94523; Its business operations are located at 1750 S El Camino Real, San Mateo, California 94402; and
- e. MARCOVICI IP LLC is a California limited liability company with its principal place

¹ <https://ilovejacks.com/locations/newark/> (last accessed February 5, 2023).

1 of business in San Mateo, California in San Mateo County located at 1700 S. El Camino
2 Real, Suite, San Mateo, California 94402;

3 12. Additionally, MARCOVICI HOLDINGS, INC. is a California limited liability company
4 with its principal place of business in Pleasant Hill, California in Contra Costa County located at 42
5 Hamar Street, Pleasant Hill, California 94523.

6 13. Defendants created the policies and procedures described herein and, at all times during
7 the relevant class period, participated in, endorsed, implemented, and performed the conduct alleged
8 herein.

9 14. The practices and policies complained of by way of this Complaint are enforced
10 throughout the State of California, including in Alameda County.

11 15. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
12 participation in the conduct alleged herein, of the Defendants sued as Does 1-10, inclusive, but is
13 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
14 therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
15 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
16 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
17 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
18 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
19 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
20 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
21 principal, was negligent in the selection and hiring, training, and supervision of each and every other
22 Defendant as an agent, servant, employee, successor in interest, alter ego, and/or joint venturer. Plaintiff
23 is informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
24 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
25 and that the acts of each Defendant are legally attributable to each of the other Defendant.

26 16. Upon information and belief, Plaintiff is informed and believes and thereon alleges, that
27 at all relevant times, Defendants have acted as joint employers by jointly (a) exercising meaningful
28 control over Plaintiff and Class Members' work performed; (b) exercising meaningful control over

1 Plaintiff's and Class Members' wages, hours, and working conditions, including the quantity, quality
2 standards, speed, scheduling, and operative details of the tasks Plaintiff and Class Members performed;
3 (c) requiring Plaintiff and Class Members to perform work integral to Defendants' businesses; and (d)
4 exercising sufficient control over Plaintiff and Class Members monetarily speaking, resulting in Plaintiff
5 and Class Members' dependence on Defendants who shared the power to set Plaintiff and Class
6 Members' wages and control Plaintiff and Class Members' working conditions and who reaped the
7 benefits from underpaying Plaintiff and Class Members' wages and noncompliance.

8 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9 17. At all times relevant herein, Defendants operate a chain of at least four Jack's
10 Restaurant and Bar locations in California. Defendants provide a dining and bar experience to its
11 customers.

12 18. Upon information and belief from the California Secretary of State website, at all
13 relevant times, Defendants have maintained a centralized Human Resources department at their
14 headquarters, which is located at either their Pleasant Hill location at 42 Hamar Street, Pleasant Hill,
15 California 94523 or San Mateo location at 1700 South El Camino Real, Suite 210, San Mateo,
16 California 94402.

17 19. At all relevant times, Defendants have been, and continue to be, a "person" as that term
18 is defined under California Business & Professions Code section 17021 and California Labor Code
19 sections 1-29.5.

20 20. Upon information and belief, Defendants provided Plaintiff and Class Members,
21 regardless of location, the same set of onboarding documents including, but not limited to, Defendants'
22 policies and procedures and employee handbook and new-hire documents.

23 21. Upon information and belief, Defendants maintain a centralized Payroll department at
24 their corporate and operations headquarters in either San Mateo or Pleasant Hill, California, which
25 processes payroll for all non-exempt, hourly-paid employees working for Defendants at their various
26 locations in California, including Plaintiff and Class Members and issues Plaintiff and Class Members
27 the same formatted wage statements following work performed.

1 22. Upon information and belief, Defendants process payroll for departing employees in the
2 same manner throughout the State of California, regardless of location or the manner in which the
3 employees' employment ends.

4 23. At all times relevant herein, Plaintiff was employed by Defendants as an hourly,
5 nonexempt restaurant employee in the position of server in California during the Class Period. He also
6 performed tasks assigned to others' positions when needed.

7 24. At Defendants' locations, Defendants employ hourly, nonexempt workers such as
8 Plaintiff under several job titles, including, but not limited to, hostess, server, food preparer, cook,
9 barback, bartender, and busser to carry out Defendants' purpose of providing dining services to patrons.

10 25. At all times relevant herein, Plaintiff and Class Members were assigned to and required
11 and permitted to work without pay while performing tasks, including but not limited to: greeting
12 patrons; assisting patrons with the menu; taking and food and drink orders, including alcoholic
13 beverages; running food and drinks to patrons; checking to ensure each patron's order is fulfilled;
14 providing drink refills and additional requests from customers; bussing tables; processing payments; and
15 wiping down the side station area; among other miscellaneous tasks in California. Plaintiff and Class
16 Members were not properly compensated for this work.

17 26. At all times relevant herein, Plaintiff and Class Members were assigned to and required
18 and permitted to work shifts lasting over four (4) hours and were not authorized nor permitted to take a
19 ten (10) minute rest break during each shift or each major fraction of a four (4) hour work period.

20 27. At all times relevant herein, Plaintiff and Class Members were assigned to and required
21 to work for periods lasting in excess of five (5) hours and were not provided nor allowed to take thirty
22 (30) minute, uninterrupted, off-duty meal periods. Due to understaffed shifts combined with sudden
23 influxes of high volumes of patrons for which Defendants could reasonably have anticipated during
24 typical meal times, Plaintiff and Class Members were unable to take their meal periods entirely or at
25 least in a legally timely manner. Plaintiff regularly took his thirty (30) minute meal period late,
26 interrupted, or had to remain on duty and be required to perform working during his meal period.
27 Plaintiff was required to continue working after being required to clock out to avoid either working more
28 than six (6) hours in a single shift without a meal period or else for working beyond the end of the fifth

1 hour when it was time to clock out for a meal period. Accordingly, these meal periods were on duty for
2 which Defendants should have but did not compensate Plaintiff and Class Members with premium pay
3 for missed meal periods. Moreover, Plaintiff and Class Members often worked in excess of ten (10)
4 hours without a second thirty (30) minute meal period.

5 28. At all times relevant herein, Defendants failed to authorize and permit rest breaks during
6 the Class Period. Plaintiff and Class Members were routinely required to work through rest breaks at
7 the direction of Defendants and/or Defendants' knowledge and acquiescence. Again, due to poor
8 management and understaffed shifts combined with sudden influxes of patrons for which Defendants
9 could reasonably have anticipated during typical meal times, Plaintiff and Class Members were unable
10 to take their rest breaks and therefore, had to remain on duty during those rest breaks. Simply put,
11 Defendants had a practice to not provide rest breaks. This rampant practice caused Plaintiff and Class
12 Members to remain on duty during rest breaks, and therefore, constitutes a failure on Defendants' part
13 to provide compliant rest breaks. Accordingly, Defendants should have but did not compensate Plaintiff
14 and Class Members with premium pay owed for these noncompliant rest breaks.

15 29. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
16 of minimum wages. At all times relevant herein, Plaintiff and Class Members regularly worked a
17 substantial amount of time work—not only a *de minimus* amount but several minutes or more—before
18 clocking in and also after clocking out each shift. Plaintiff and Class Members performed tasks after
19 clocking out, such as taking patron's food orders, running food and drinks to patrons, bussing tables,
20 processing payment, wiping down the side station area, and other general closing duties. Because
21 Plaintiff and Class Members performed work while not clocked in, they were not being paid minimum
22 wage nor eligible overtime wages for that additional time worked. Correspondingly, Defendants' did
23 not later correct Plaintiff and Class Members' time to reflect those minutes worked while not clocked
24 in. Additionally, by failing to pay Plaintiff and Class Members all premium pay for noncompliant meal
25 periods and rest breaks, Defendants failed to pay Plaintiff and Class Members all minimum wages owed.

26 30. At all times relevant herein, Plaintiff and Class Members worked in excess of eight (8)
27 hours per workday or forty (40) hours per work week. Defendants failed to pay for all hours worked in
28 excess of eight (8) hours per day, and when compensated for overtime, failed to pay the correct amount

1 of overtime by miscalculating the regular rate. Defendants failed to pay current and former hourly,
2 nonexempt cafeteria employees one and one-half times (1½) their regular rate of pay for hours worked
3 in excess of eight (8) hours per day or forty (40) hours per workweek. Defendants also failed to pay
4 their employees at a rate of no less than twice the regular rate of pay for work in excess of twelve (12)
5 hours in one day or for all hours worked in excess of eight (8) hours on the seventh consecutive day of
6 work in a workweek.

7 31. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount
8 of and rate for overtime wages. Defendants have failed and continue to fail to include those amounts in
9 the regular rate of pay for purposes of calculating overtime. As mentioned earlier, Defendants also fail
10 to record all hours as overtime by failing to record all hours worked in a workday. This work, done
11 primarily for the employer's benefit, is time that hourly employees should be, but were not compensated
12 for, both straight hours and overtime hours worked in excess of forty (40) hours in a week, hours worked
13 in excess of eight (8) hours in a day, and for the first eight (8) hours worked on the seventh consecutive
14 day of work in a workweek.

15 32. Supervisors employed at Defendants' locations, including Plaintiff's location, had
16 knowledge of and required Plaintiff and Class Members to perform work during meal periods and rest
17 breaks. Supervisors throughout California were aware that Plaintiff and others similarly situated were
18 performing work during these times without proper wages or overtime compensation.

19 33. In light of Defendants' failure to record employees' off-the-clock time that employees
20 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,
21 Defendants failed to properly calculate the hourly employees' hours and therefore, employees' premium
22 pay, minimum wages, and overtime wages due. Accordingly, Defendants failed to provide accurate
23 wage statements to their hourly employees identifying all hours worked and all rates in effect during the
24 pay period.

25 34. At all times relevant herein, the same unlawful practices and procedures described above
26 affect hourly, nonexempt workers of Defendants employed in California.

27 35. At all times relevant herein, Defendants failed to pay Plaintiff and Class Members for all
28 hours worked. Thus, Defendants did not pay Plaintiff and Class Members minimum wages in

1 accordance with law and, because Class Members worked shifts over eight (8) hours in duration,
2 Defendants also did not pay them all overtime wages in accordance with law.

3 36. Additionally, Defendants have failed to maintain Plaintiff and Class Members' accurate
4 time records.

5 37. Defendants have failed to pay Plaintiff and Class Members who no longer work for
6 Defendants all wages owed upon separation. By failing to pay all premium pay owed every pay period,
7 failing to pay all minimum and overtime wages every pay period, and then correspondingly, not
8 subsequently remedying those failings by paying all unpaid wages upon separation to Plaintiff and other
9 similarly situated Class Members, Defendants have failed to pay all wages owed upon separation.

10 38. Defendants' conduct, as alleged herein, has caused Plaintiff and Class Members damages
11 including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiff and the
12 Class for failing to pay minimum wages, failing to pay overtime wages, failing to pay all wages owed
13 every pay period, failing to maintain required records, failing to provide timely and accurate wage
14 statements, failing to pay all wages owed upon separation, and unfair competition.

15 39. Plaintiff has complied with the procedures for bringing suit specified in California Labor
16 Code section 2699.3. By letter dated December 23, 2022, Plaintiff gave written notice by certified mail
17 to the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories to support
19 the alleged violations.

20 **V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS**

21 40. Plaintiff is a member of and seeks to be the representative for the Class of similarly
22 situated employees who all have been exposed to, have suffered, and/or were permitted to work under
23 Defendants' unlawful employment practices as alleged herein.

24 41. Plaintiff brings his first through eighth causes of action on behalf of himself and on behalf
25 of the following Class² of persons:

26
27
28 ² Plaintiff reserves the right under California Rules of Court, Rule 3.765, to amend or modify the Class description
with greater particularity or further division into subclasses or limitation to particular issues.

1 All current and former hourly, nonexempt employees who have worked in
2 California for JACKS NW, LLC; JACKS PH, LLC; JACKS SB, LLC;
3 and/or JACKS SM, LLC at any time during the period beginning four years
4 prior to the filing of this Complaint through the present.

4 42. This action is appropriately suited for a class action pursuant to Code of Civil Procedure
5 section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined
6 community of interest, and substantial benefits from certification that render proceeding as a class
7 superior to the alternatives.

8 43. Numerosity and Ascertainability. The size of the Class makes a class action both
9 necessary and efficient. On information and belief, the proposed Class includes hundreds of current and
10 former employees at Defendants' locations in California. Members of the Class are ascertainable through
11 Defendants' records but are so numerous that joinder of all individual Class Members would be
12 impractical.

13 44. Predominant Common Questions of Law and Fact. Pursuant to section 382, common
14 questions of law and fact exist as to all Class Members. These questions predominate over any
15 individualized issues. These common questions include but are not limited to:

- 16 a. Whether Defendants' policies and practices described in this Complaint were and are illegal;
- 17 b. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a
18 pattern or practice of failing to provide timely, off-duty, thirty (30) minute meal periods to
19 Plaintiff and members of the Class who worked as hourly, nonexempt restaurant employees
20 in California during the Class Period;
- 21 c. Whether Defendants engaged in a pattern or practice of impeding Plaintiff and the members
22 of the Class who worked as hourly, nonexempt restaurant employees in California during the
23 Class Period from taking statutory, off-duty, thirty (30) minute meal periods on a timely basis;
- 24 d. Whether Defendants violated California Industrial Welfare Commission ("IWC") Wage
25 Order No. 5-2001, section 11 by failing to provide Plaintiff and the members of the Class who
26 worked as hourly, nonexempt restaurant employees in California during the Class Period with
27 timely, off-duty, thirty (30) minute meal periods;

- 1 e. Whether Defendants engaged in a pattern or practice of failing to properly compensate
2 Plaintiff and the members of the Class who worked as hourly, nonexempt restaurant
3 employees in California during the Class Period for missed, untimely, or on-duty meal periods
4 as required by California law;
- 5 f. Whether Defendants failed to compensate, and therefore violated IWC Wage Order No. 5-
6 2001, section 12 and Labor Code section 226.7 by failing to provide ten (10) minute,
7 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
8 (4) hours;
- 9 g. Whether Defendants engaged in a pattern or practice of failing to properly compensate
10 Plaintiff and the members of the Class who worked as hourly, nonexempt restaurant
11 employees in California during the Class Period for failing to provide ten (10) minute,
12 uninterrupted rest breaks as contemplated by California law for work periods in excess of four
13 (4) hours;
- 14 h. Whether Plaintiff and each member of the Class were not paid minimum wage for each hour
15 worked or part thereof during which they were required to perform acts at the direction and
16 for the benefit of Defendants;
- 17 i. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff and the
18 members of the Class who worked as hourly, nonexempt employees in California for the total
19 hours worked during the Class Period;
- 20 j. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
21 overtime pay to Plaintiff and the Class for hours worked in excess of eight (8) hours in a day;
- 22 k. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of
23 double time for hours worked in excess of twelve (12) hours in a day;
- 24 l. Whether Defendants violated section 510 of the Labor Code and/or section 3 of IWC Wage
25 Order No. 5-2001 of the IWC by failing to pay overtime pay to Plaintiff and the Class for
26 hours worked in excess of eight (8) hours in a day;
- 27 m. Whether Defendants violated section 510 of the Labor Code and/or section 3 of IWC Wage
28 Order No. 5-2001 of the IWC by failing to pay overtime pay to Plaintiff and the Class for the

1 first eight (8) hours worked in a day on the seventh consecutive day in a workweek and double
2 time for all hours worked in excess of eight (8) hours on such days;

3 n. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 by failing to
4 compensate Plaintiff and the Class for those acts Defendants required Plaintiff and members
5 of the Class to perform for the benefit of Defendants;

6 o. Whether Defendants have engaged in a common course of requiring or permitting their
7 hourly, nonexempt employees to not report all hours worked during the Class Period;

8 p. Whether Defendants maintained accurate time records of off-duty, thirty (30) minute meal
9 periods taken by Plaintiff and members of the Class during the Class Period in accordance
10 with section 7 of IWC Wage Order No. 5-2001;

11 q. Whether Defendants have engaged in a common course of failing to maintain true and
12 accurate time records for all hours worked by their nonexempt employees;

13 r. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage
14 statements to Plaintiff and members of the Class that failed to include payments for missed,
15 untimely, and/or on-duty meal periods among wages earned throughout the Class Period;

16 s. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements
17 to Plaintiff and members of the Class that failed to accurately state the total hours worked, to
18 the detriment of Plaintiff and the Class;

19 t. Whether Defendants have engaged in a common course of failing to pay nonexempt
20 employees all wages due upon termination;

21 u. Whether Defendants engaged in an unfair practice and violated California Business and
22 Professions Code, section 17200, *et seq.* by failing to provide Plaintiff and the members of
23 the Class who worked as hourly, nonexempt restaurant employees in California during the
24 Class Period with their statutory, off-duty, meal periods on a timely basis;

25 v. Whether Defendants have engaged in unfair competition by the above-listed conduct; and

26 w. The nature and extent of class-wide injury and the measure of damages for the injury.

27 45. Typicality. Plaintiff's claims are typical of the members of the Class. Plaintiff, like other
28 members of the Class working for Defendants in California, was subjected to Defendants' policy and

1 practice of refusing to properly and fully pay overtime in violation of California wage and hour laws.
2 Plaintiff's job duties were and are typical of those of other class members who worked for Defendants in
3 California.

4 46. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of
5 the Class because his individual interests are consistent with and not antagonistic to the interests of the
6 Class, and because Plaintiff has selected counsel who has the requisite resources and ability to prosecute
7 this case as a class action and are experienced labor and employment attorneys who have successfully
8 litigated other cases involving similar issues.

9 47. Superiority of Class Mechanism. The class action mechanism is superior to any
10 alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class
11 action would permit the large number of injured parties to prosecute their common claims in a single
12 forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial
13 resources. A class action is the only practical way to avoid the potentially inconsistent results that
14 numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means
15 by which Plaintiff can effectively litigate against a large, well-represented corporate defendant like
16 Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would
17 be able to retain the benefits and fruits of the many wrongful violations of the California state laws.
18 Numerous repetitive individual actions would also place an enormous burden on the courts as they are
19 forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and
20 over again.

21 VI. FIRST CAUSE OF ACTION

22 Failure to Provide Meal Periods

23 in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 5-2001, § 11

24 (Brought by Plaintiff on Behalf of Himself and the Class Against Defendants)

25 48. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
26 as if fully set forth herein.

27 49. California Labor Code section 226.7(a) provides, "No employer shall require any
28 employee to work during any meal or rest period mandated by an applicable order of the Industrial

1 Welfare Commission.”

2 50. IWC Wage Order No. 5-2001 (11)(A) provides, in pertinent part: “No employer shall
3 employ any person for a work period of more than five (5) hours without a meal period of not less than
4 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
5 the meal period may be waived by mutual consent of the employer and the employee.”

6 51. Section 512(k) of the California Labor Code provides, in pertinent part, that: “An
7 employer may not employ an employee for a work period of more than five hours per day without
8 providing the employee with a meal period of not less than 30 minutes, except that if the total work period
9 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of
10 both the employer and employee. An employer may not employ an employee for a work period of more
11 than 10 hours per day without providing the employee with a second meal period of not less than 30
12 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be
13 waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

14 52. As alleged herein, Defendants failed to authorize and permit timely, uninterrupted meal
15 periods during the Class Period. Plaintiff and members of the Class were routinely required to work
16 without a timely, uninterrupted meal period at the direction of Defendants and/or with Defendants’
17 knowledge and acquiescence. Defendants’ uniform adoption of a chronically understaffed staffing model
18 in light of customer volume prevented Plaintiff and Class Members from being relieved of all duties to
19 take compliant meal periods. The combination of Defendants’ failure to schedule meal periods, and their
20 adoption of a chronically understaffed staffing model despite heavy patron demand, and generally, poor
21 management, impeded and prevented Plaintiff and other Class Members from taking timely,
22 uninterrupted, off-duty meal periods. As a result, Plaintiff and Class Members were not relieved of their
23 duties such that they could take duty-free meal periods, and thus had to work through some or all of their
24 meal periods, take their meal periods after the end of the fifth hour, and/or wait extended periods of time
25 before taking meal periods, and have their meal periods interrupted to return to work. For example,
26 Plaintiff regularly clocked out for his meal period but continued working, or clocked out after the end of
27 the fifth hour, or else would resume work before thirty (30) minutes had passed. Because too few
28 employees were staffed to handle the large volumes of patrons and duties, Plaintiff had to perform his

1 duties throughout the majority of his shift and therefore was not relieved of his duties to take compliant
2 meal periods.

3 53. Defendants also did not schedule second meal periods and had no policy for permitting
4 and authorizing Plaintiff and other employees to take second 30-minute meal periods on days they
5 worked in excess of 10 hours in one day. For example, during his employment, Plaintiff occasionally
6 worked over 10 hours in a day but did not receive a second compliant meal period on those days nor did
7 he consent to waiving them. Because of Defendants' company-wide chronic understaffed staffing model,
8 Plaintiff and other Class Members were not relieved of all duties such that they could take second 30-
9 minute meal periods and instead had to work through them. Defendants still instructed Plaintiff and Class
10 Members to clock out but remain on-duty. Accordingly, Defendants failed to provide all meal periods
11 in violation of California Labor Code sections 226.7 and 512. Defendants knew or should have known
12 that their company-wide adoption of a chronically understaffed staffing model and scheduling policies
13 would result in a failure to provide Plaintiff and other Class Members with full and timely meal periods
14 as required by the applicable IWC Wage Order and Labor Code sections 226.7 and 512(a). Furthermore,
15 Plaintiff and other Class Members did not sign valid meal period waivers on days that they were entitled
16 to meal periods but were not relieved of all duties.

17 54. Moreover, Defendants engaged in a systematic, company-wide policy to not pay meal
18 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members
19 one (1) additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff and
20 other Class Members for each instance of noncompliance nor at the correct rate of pay for premium wages
21 because Defendants failed to include all forms of compensation, such as commissions, incentive pay,
22 and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the extent Defendants paid
23 Plaintiff and other Class Members premium pay for missed meal periods, it did so at a lower rate than
24 required by law. As a result, Defendants failed to provide Plaintiff and other Class Members compliant
25 meal periods and failed to pay the full meal period premiums due, in accordance with California Labor
26 Code sections 204, 210, 226.7, and 512.

27 55. By their actions in requiring their employees to work through meal periods and/or their
28 failure to relieve nonexempt, hourly employees of their duties for their off-duty meal periods, Defendants

1 have violated California Labor Code section 226.7 and section 11 of IWC Wage Order No. 5-2001 and
2 is liable to Plaintiff and the Class.

3 56. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived
4 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and
5 section 11 of IWC Wage Order No. 5-2001, in the amount of one additional hour of pay at the employee's
6 regular rate of pay for each work period during each day in which Defendants failed to provide their
7 hourly, nonexempt cafeteria employees with timely, statutory, off-duty meal periods.

8 **VII. SECOND CAUSE OF ACTION**

9 **Failure to Provide Rest Breaks**

10 **in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;**

11 **IWC Wage Order No. 5-2001, § 12**

12 **(Brought by Plaintiff on Behalf of Himself and the Class Against Defendants)**

13 57. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
14 as if fully set forth herein.

15 58. California Labor Code section 226.7(a) provides, "No employer shall require any
16 employee to work during any meal or rest period mandated by an applicable order of the Industrial
17 Welfare Commission."

18 59. IWC Wage Order No. 5-2001, section (12)(A) provides, in pertinent part: "Every
19 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall
20 be in the middle of each work period. The authorized rest period time shall be based on the total hours
21 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
22 However, a rest period need not be authorized for employees whose total daily work times is less than
23 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
24 there shall be no deduction from wages."

25 60. IWC Wage Order No. 5-2001, section (12)(B) provides, "If an employer fails to provide
26 an employee with a rest period in accordance with the applicable provisions of this order, the employer
27 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
28 workday that the rest period is not provided."

1 61. As alleged herein, Defendants failed to authorize and permit rest breaks during the Class
2 Period. Plaintiff and members of the Class were routinely required to work through rest breaks at the
3 direction of Defendants and/or with Defendants' knowledge and acquiescence.

4 62. Furthermore, as with meal periods, Defendants' scheduling policies, chronically
5 understaffed staffing model, and resultant lack of break coverage stemming from poor management,
6 combined with time-sensitive patron demands prevented Plaintiff and other Class Members from being
7 relieved of all duty in order to take compliant rest breaks and forced Plaintiff and other Class Members
8 to forgo rest breaks and/or remain on duty during rest breaks. As a result, Plaintiff and Class Members
9 would work shifts in excess of 3.5 hours without 10-minute rest breaks to which they were entitled. For
10 example, throughout his employment, during his 6-hour or longer shifts, Plaintiff regularly worked
11 without receiving at least one, if not both (if shift was eight hours), of his 10-minute rest breaks,
12 continuing to perform his duties such as greeting patrons; assisting patrons with the menu; taking and
13 food and drink orders, including alcoholic beverages; running food and drinks to patrons; checking to
14 ensure each patron's order is fulfilled; providing drink refills and additional requests from customers;
15 bussing tables; processing payments; and wiping down the side station area, without taking 10-minute
16 rest breaks because there were too few employees staffed to cover Plaintiff's responsibilities that required
17 attention at all times.

18 63. At the same time, Defendants implemented a company-wide policy to not pay rest break
19 premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Class Members one
20 (1) additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other
21 Class Members at the correct rate of pay for premium wages because Defendants failed to include all
22 forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
23 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Class Members premium
24 pay for missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff and other
25 Class Members were denied rest breaks and Defendants failed to pay the full rest break premiums due,
26 in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

27 64. Defendants' unlawful conduct alleged herein occurred in the course of employment of
28 Plaintiff and all others similarly situated and such conduct has continued through the filing of this

Complaint.

65. As a direct and proximate result of Defendants' unlawful action, Plaintiff and the Class have been deprived of timely rest breaks and/or were not paid for rest breaks taken during the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one (1) additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide employees with timely and/or paid rest breaks.

VIII. THIRD CAUSE OF ACTION

Failure to Pay Minimum Wages

**in Violation of Cal. Labor Code §§ 510, 1194, 1194.2, and 1197; IWC Wage Order No. 5-2001, § 4
(Brought by Plaintiff on Behalf of Himself and the Class Against Defendants)**

66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

67. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one work day and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

68. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

69. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages for all hours worked in amounts set by state law.

70. Labor Code section 1194, subdivision (a) provides: "Notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the

1 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
2 attorney's fees, and costs of suit."

3 71. Labor Code section 1194.2 provides in pertinent part: "In any action under Section 1193.6
4 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed
5 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount
6 equal to the wages unlawfully unpaid and interest thereon."

7 72. Pursuant to IWC Wage Order No. 5-2001, section (2)(H), at all times material hereto,
8 "hours worked" includes "the time during which an employee is subject to the control of an employer,
9 and includes all the time the employee is suffered or permitted to work, whether or not required to do
10 so."

11 73. At all times relevant during the liability period, under the provisions of IWC Wage Order
12 No. 5-2001, Plaintiff and each Class Member should have received not less than the minimum wage in a
13 sum according to proof for the time worked, but not compensated.

14 74. For all hours that Plaintiff and Class Members worked, they are entitled to not less than
15 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an
16 amount equal to the unpaid minimum wages and interest thereon.

17 75. Pursuant to Labor Code section 1194, Plaintiff and Class Members are also entitled to
18 their attorneys' fees, costs, and interest according to proof.

19 76. At all times relevant during the liability period, Defendants willfully failed and refused,
20 and continue to willfully fail and refuse, to pay Plaintiff and Class Members the amounts owed.

21 77. As described above, Defendants required Plaintiff and other Class Members to work, such
22 as greeting patrons; assisting patrons with the menu; taking and food and drink orders, including alcoholic
23 beverages; running food and drinks to patrons; checking to ensure each patron's order is fulfilled;
24 providing drink refills and additional requests from customers; bussing tables; processing payments; and
25 wiping down the side station area; among other miscellaneous tasks at Defendants' California locations,
26 during their meal periods due to Defendants' lack of coverage for their employees and decision to staff
27 too few employees at a given time. Defendants did not pay at least minimum wages for those off-the-
28 clock hours, some of which also qualified for overtime premium payment.

1 78. Additionally, Plaintiff and Class Members performed work—not only a *de minimus*
2 amount but several minutes or more—after clocking out. Defendants never adjusted Plaintiff and Class
3 Members’ time to account for this work performed at the beginning of their shifts. Work performed
4 included, but was not limited to, taking patron’s food orders, running food and drinks to patrons, bussing
5 tables, processing payment, wiping down the side station area, and other general closing duties. It was
6 simply impossible to complete all tasks within the time allotted during their shifts, and being clocked in
7 during overtime hours was regularly discouraged. Accordingly, not all hours that Plaintiff and Class
8 Members worked were recorded, adjusted, nor subsequently compensated.

9 79. Defendants’ unlawful conduct alleged herein occurred in the course of employment of
10 Plaintiff and all other similarly situated nonexempt, hourly employees, and Defendants have done so
11 continuously through the filing of this complaint.

12 80. As a direct and proximate result of Defendants’ violation of Labor Code sections 510 and
13 1197, Plaintiff and other Class Members have suffered irreparable harm and money damages entitling
14 them to damages, injunctive relief, or restitution. Plaintiff, on behalf of himself and the Class, seeks
15 damages and all other relief allowable including all wages due while working as Defendants’ hourly,
16 nonexempt employees, attorneys’ fees, liquidated damages, prejudgment interest, and as to those
17 employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections
18 200, *et seq.*

19 81. Plaintiff and Class Members are entitled to the unpaid amount of minimum wages, pre-
20 judgment interest, liquidated damages, statutory penalties, attorneys’ fees, and costs according to Labor
21 Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

22 **IX. FOURTH CAUSE OF ACTION**

23 **Failure to Pay Overtime Wages**

24 **in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 5-2001, § 3**

25 **(Brought by Plaintiff on Behalf of Himself and the Class Against Defendants)**

26 82. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
27 as if fully set forth herein.

28 83. Pursuant to section 3 of IWC Wage Order No. 5-2001; California Code of Regulations,

1 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512,
2 1194, and 1198, Defendants were required to compensate Plaintiff and members of the Class for all
3 overtime hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for
4 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
5 (8) hours on the seventh consecutive work day, with double time after eight (8) hours on the seventh day
6 of any work week, or after twelve (12) hours in any work day.

7 84. Plaintiff and members of the Class were and are nonexempt employees entitled to the
8 protections of IWC Wage Order No. 5-2001; California Code of Regulations, Title 8, section 11040,
9 section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the
10 Class Period, Plaintiff and other members of the Class consistently worked five (5) days per week for
11 shifts of eight (8) hours or more. During the course of Plaintiff's employment, and during the course of
12 the employment of the members of the Class, Defendants failed to compensate Plaintiff and the Class for
13 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

14 85. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and members
15 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime
16 work performed during the four (4) years preceding the filing of this Complaint, based on appropriate
17 calculations of the "total remuneration" for each workweek.

18 86. In violation of state law, Defendants have knowingly and willfully refused to perform
19 their obligations to compensate Plaintiff and the Class for all wages earned and all hours worked. As a
20 direct result, Plaintiff and the Class have suffered, and continue to suffer, substantial losses related to the
21 use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking
22 to compel Defendants to fully perform their obligations under state law, all to their respective damage in
23 amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this
24 Court.

25 87. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
26 and deliberate intention of injuring Plaintiff and the Class, from improper motives amounting to malice,
27 and in conscious disregard of Plaintiff's rights and the rights of the Class. Plaintiff and the Class are thus
28 entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts

1 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

2 88. Defendants' conduct described herein violates IWC Wage Order No. 5-2001; California
3 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
4 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and
5 1194, Plaintiff and the Class are entitled to recover the unpaid balance of overtime compensation
6 Defendants owes Plaintiff and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of
7 suit.

8 **X. FIFTH CAUSE OF ACTION**

9 **Failure to Furnish Timely and Accurate Wage Statements**

10 **Upon Payment of Wages in Violation of Cal. Labor Code § 227.3**

11 **(Brought by Plaintiff on Behalf of Himself and the Class Against Defendants)**

12 89. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
13 as if fully set forth herein.

14 90. Labor Code section 226(a) sets forth reporting requirements for employers when they pay
15 wages, as follows: "Every employer shall . . . at the time of each payment of wages, furnish his or her
16 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked
17 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the
18 employee is paid on a piece-rate basis" Section (e) provides: "An employee suffering injury as a
19 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled
20 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
21 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
22 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an
23 award of costs and reasonable attorney's fees."

24 91. Defendants failed to accurately record all hours worked by Plaintiff and Class Members.

25 92. Defendants failed to accurately record the overtime hours worked by Plaintiff and Class
26 Members.

27 93. Additionally, Defendants failed to accurately record all rates of pay in effect during the
28 pay period.

overtime, and missed, untimely, or on-duty meal periods and rest breaks upon their termination or separation from employment with Defendants as required by California Labor Code sections 201 and 202. Thus, in violation of Labor Code section 201, Defendants failed to pay Plaintiff and the Class members the full amount of wages due and owing them, in amounts to be proven at the time of trial, but in excess of the jurisdictional minimum of this Court.

102. Defendants' failure to pay Plaintiff and the Class respective wages due and owed to them was willful, and done with the wrongful and deliberate intention of injuring Plaintiff and the Class Members and in conscious disregard of their rights.

103. Defendants' willful failure to pay former employee Plaintiff and the Class all of the wages due and owing them constitutes violations of Labor Code sections 201 and 203, which provide that an employee's wages will continue as a penalty up to thirty (30) days from the time the wages were due. Therefore, former employee Plaintiff and the Class members are each entitled to penalties pursuant to Labor Code section 203.

XII. SEVENTH CAUSE OF ACTION

Failure to Maintain Records

in Violation of Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 7

(Brought by Plaintiff on Behalf of Himself and the Class Against All Defendants)

104. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

105. During the Class Period, as part of Defendants' illegal payroll policies and practices to deprive Plaintiff and Class Members of all wages earned and due, Defendants knowingly and intentionally failed to maintain records as required under California Labor Code sections 226 and 1174, and IWC Wage Order No. 5-2001, section 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

106. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Class Members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class Members are entitled to all available civil

1 and statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including but not
2 limited to those provided in California Labor Code section 226(e), as well as other available remedies.

3 **XIII. EIGHTH CAUSE OF ACTION**

4 **Violations of California's Unfair Competition Law ("UCL"),**

5 **California Business and Professions Code §§ 17200, *et seq.***

6 **(Brought by Plaintiff on Behalf of Himself and the Class Against Defendants)**

7 107. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
8 as if fully set forth herein.

9 108. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any
10 unlawful, unfair, or fraudulent business practices.

11 109. Through their actions alleged herein, Defendants have engaged in unfair competition
12 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair,
13 and/or fraudulent business practices under the UCL.

14 110. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the
15 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure
16 to pay Class Members wages and compensation they earned through labor provided, and failing to
17 otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but
18 is not limited to, issuing wage statements containing false and/or misleading information about the time
19 the Class Members worked and the amount of wages or compensation due.

20 111. Defendants' violations of California wage and hour laws and illegal payroll practices or
21 payment policies constitute a business practice because they were done repeatedly over a significant
22 period of time, and in a systematic manner to the detriment of Plaintiff and Class Members.

23 112. Plaintiff has standing to assert this claim because he has suffered injury in fact and has
24 lost money as a result of Defendants' conduct.

25 113. For the four (4) years preceding the filing of this action through the present, Plaintiff and
26 Class Members have suffered damages and request restitutionary disgorgement of all monies and profits
27 to be disgorged from Defendants in an amount according to proof at the time of trial and an injunction
28 prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

1 **XIV. NINTH CAUSE OF ACTION**

2 **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**

3 **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**

4 **(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)**

5 114. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
6 as if fully set forth herein.

7 115. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage
8 Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and
9 Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable
10 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought
11 on behalf of themselves and other current or former employees pursuant to procedures outlined in
12 California Labor Code section 2699.3.

13 116. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person
14 who was employed by the alleged violator and against whom one or more of the alleged violations was
15 committed."

16 117. Plaintiff and other current and former employees of Defendants are "aggrieved
17 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former
18 employees and one or more of the alleged violations were committed against them.

19 118. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including
20 Plaintiff, may pursue a civil action arising under PAGA, alleging violations of any provision listed in
21 section 2699.5, after the following requirements have been met:

- 22 a. The aggrieved employee shall give written notice ("Employee's Notice") by online filing
23 to the LWDA and by certified mail to the employer of the specific provisions of the
24 California Labor Code alleged to have been violated, including the facts and theories to
25 support the alleged violations;
- 26 b. The Employee's Notice filed with the LWDA is accompanied by a seventy-five-dollar
27 (\$75) filing fee; and
- 28 c. The LWDA shall provide notice ("LWDA Notice") to the employer and the aggrieved

1 employee by certified mail that it does not intend to investigate the alleged violation within
2 sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of
3 the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar
4 days of the postmark date of the Employee's Notice, the aggrieved employee may
5 commence a civil action pursuant to California Labor Code section 2699 to recover civil
6 penalties in addition to any other penalties to which the employee may be entitled.

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

- 10 a. The aggrieved employee shall give written notice by online filing ("Employee's Notice")
11 to the LWDA and by certified mail to the employer of the specific provisions of the
12 California Labor Code alleged to have been violated, including the facts and theories to
13 support the alleged violations;
- 14 b. The Employee's Notice filed with the LWDA is accompanied by a seventy-five-dollar
15 (\$75) filing fee; and
- 16 c. The employer may cure the alleged violation within thirty-three (33) calendar days of the
17 postmark date of the Employee's Notice. The employer shall give written notice by
18 certified mail within that period of time to the aggrieved employee or representative and
19 the agency if the alleged violation is cured, including a description of actions taken, and
20 no civil action pursuant to Section 2699 may commence. If the alleged violation is not
21 cured within the 33-day period, the employee may commence a civil action pursuant to
22 Section 2699.

23 120. On December 23, 2022, Plaintiff provided written notice by online filing to the LWDA
24 and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to
25 have been violated, including facts and theories to support the alleged violations, in accordance with
26 California Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75
27 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated
28 December 23, 2022 is attached hereto as "**Exhibit 1.**"

1 121. As of the filing date of the initial complaint, over sixty-five (65) days have passed since
2 Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to
3 investigate Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations
4 set forth in this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code section 2699.3(a) and (c) to recover civil penalties Against All Defendants, in addition to
6 other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
7 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

17 123. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
18 employer(s) who violated Plaintiff's and other non-party aggrieved employees' rights by violating
19 various sections of the California Labor Code as set forth above.

20 124. As set forth below, Defendants have violated numerous provisions of both the Labor Code
21 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including

- 22 a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
23 Order(s) for Defendants' failure to provide Plaintiff and other Class Members with meal
24 periods and/or rest breaks, as set forth above;
- 25 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
26 IWC Wage Order(s) for Defendants' failure to compensate Plaintiff and other Class
27 Members with at least minimum wages for all hours worked as set forth above;
- 28 c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for

Defendants' failure to compensate Plaintiff and other Class Members with overtime wages for all hours worked in excess of eight (8) in one day or forty (40) in one week and double time for all hours worked in excess of twelve (12) hours, as set forth above;

d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s) for failure to provide accurate and complete wage statements to Plaintiff and other Class Members as set forth above;

e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s) for failure to maintain payroll records. 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(s). 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(s), 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 companywide basis, to keep records of meal period start and stop times for Plaintiff and other non-party aggrieved employees in violation of section 1198. 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" 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 actually worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked;

f. Violations of Labor Code section 204 for failure to pay all earned wages during

employment as set forth above;

g. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth above;

h. Plaintiff and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and

i. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

125. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party aggrieved employees, and the State of California Against All Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

126. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and twenty-five percent (25%) to all aggrieved employees.

127. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, respectfully requests that this Court find against Defendants as follows:

1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiff and each Class Member;
4. One hour of wages due to Plaintiff and each Class Member for each work period of more than four (4) hours when they did not receive an uninterrupted ten (10) minute rest break;

5. One hour of wages due to Plaintiff and each Class Member for each work period of more than five (5) hours when they did not receive a timely, uninterrupted thirty (30) minute meal period;
6. One hour of wages due to Plaintiff and each Class Member for each work period of over four (4) hours or major fraction thereof when they did not receive an off-duty net ten (10) minute rest break;
7. All unpaid minimum wages and liquidated damages due to Plaintiff and each Class Member on their minimum wage claim;
8. For waiting time penalties pursuant to Labor Code section 203;
9. Statutory penalties under Labor Code section 226(e);
10. For penalties pursuant to or corresponding with Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 226.7, 354, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, and 1198;
11. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;
12. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
13. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
14. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, and Code of Civil Procedure 1021.5;
15. Accounting of Defendants' records for the liability period;
16. General, special, and consequential damages, to the extent allowed by law; and
17. All such other and further relief that the Court may deem just and proper.

Dated: February 17, 2023

SHEGERIAN & ASSOCIATES, INC.

By: 
Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

Attorneys for Plaintiff, CHRIS MOTT, and all
others similarly situated and aggrieved

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Dated: February 17, 2023

By:

Cheryl A. Kenner

CLASS ACTION AND PAGA REPRESENTATIVE ACTION COMPLAINT

EXHIBIT 1

December 23, 2022

VIA ONLINE SUBMISSION

Natalie Palugyai, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Jacks NW, LLC dba Jack's Restaurant and Bar
42 Hamar Street
Pleasant Hill, CA 94523

Jacks NW, LLC dba Jack's Restaurant and Bar
ATTN: Legal Department
1700 S El Camino Real Ste 210
San Mateo, CA 94402

VIA CERTIFIED MAIL

Marcovici IP LLC
ATTN: Legal Department
1700 S El Camino Real Ste 210
San Mateo, CA 94402

Jacks PH, LLC dba Jack's Restaurant and Bar
ATTN: Legal Department
1700 S El Camino Real Ste 210
San Mateo, CA 94402

Marcovici Holdings, Inc.
ATTN: Legal Department
42 Hamar Street
Pleasant Hill, CA 94523

Jacks SB, LLC dba Jack's Restaurant and Bar
ATTN: Legal Department
42 Hamar Street
Pleasant Hill, CA 94523

Jacks NW, LLC dba Jack's Restaurant and Bar
ATTN: Human Resources Director
1029 Newpark Mall Road
Newark, CA 94560

Jacks SM, LLC dba Jack's Restaurant and Bar
ATTN: Legal Department
42 Hamar Street
Pleasant Hill, CA 94523

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA
LABOR CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Jacks NW, LLC
dba Jack's Restaurant and Bar

From: Chris Mott, on behalf of himself and all other current and former hourly nonexempt
employees for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by former employee Chris Mott ("Mr. Mott")
to seek compensation and all other available relief, including civil penalties on his behalf and on

145 S Spring Street, Suite 400
Los Angeles, California 90012

11520 San Vicente Boulevard
Los Angeles, California 90049

6205 Lusk Boulevard, Suite 200
San Diego, California 92121

650 California Street, Suite 4-137
San Francisco, California 94108

90 Broad Street, Suite 804
New York, New York 10004

3764 Elizabeth Street
Riverside, California 92506

the behalf of all those similarly aggrieved (collectively, with Mr. Mott, "Claimants") who have been injured by violations of the California Labor Code. Mr. Mott, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Jacks NW, LLC dba Jack's Restaurant and Bar ("Jack's Restaurant"), intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Jacks NW, LLC dba Jack's Restaurant and Bar operates multiple Jack's Restaurant locations that provide a dining and bar experience to its customers. Claimant Mr. Mott worked for Jack's Restaurant as an hourly, non-exempt restaurant employee of Jack's Restaurant in the position of server earning \$15.00 per hour at the time of his separation. Mr. Mott, on behalf of himself and all other similarly aggrieved current and former employees of Jack's Restaurant are or were non-exempt, hourly restaurant employees who are or were engaged in providing food, alcoholic beverages, and dining-related services for Jack's Restaurant in Southern California. As part of their employment with Jack's Restaurant, Claimant and other non-exempt, hourly restaurant employees, collectively, "non-exempt, hourly restaurant employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to: greeting patrons; assisting patrons with the menu; taking and food and drink orders, including alcoholic beverages; running food and drinks to patrons; checking to ensure each patron's order is fulfilled; providing drink refills and additional requests from customers; bussing tables; processing payments; cutting and preparing bread; making expresso drinks; cleaning the expresso maker; restocking cups, plates, and silverware at the side station; and wiping down the side station area.

Claimant Mr. Mott regularly worked 4-5 days per week for 5.5 to 7.5 hours per day. During the entire course of his employment, Jack's Restaurant failed to provide Mr. Mott and continues to fail to provide all others similarly situated with all minimum and overtime wages and compliant meal periods and rest breaks, neither of which are scheduled and the latter of which are affirmatively denied. As a consequence, Jack's Restaurant has failed to comply with Labor Code sections 226.7, 510, and 512, and Industrial Welfare Commission ("IWC") Wage Order 5-2001, sections 3, 11, and 12. Jack's Restaurant has also failed to pay minimum wages to Mr. Mott and other non-exempt, hourly restaurant employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and IWC Wage Order No. 5-2001, section 4. Specifically, Mr. Mott regularly performed work off-the-clock because he was required to continue working after he had to clock out to avoid either working more than six (6) hours in a single shift without a meal period or else for working beyond the end of the fifth hour when it was time to clock out for a meal period. Not all reporting pay owed under Wage Order No. 5-2001, section 5 was paid to Mr. Mott and Claimants either. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Jack's Restaurant has failed to compensate Claimants at a rate of 1.5 times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day

of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Jack's Restaurant has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Jack's Restaurant has failed and continues to fail to provide timely, accurate wage statements to Mr. Mott and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Jack's Restaurant, including Mr. Mott, Jack's Restaurant violated Labor Code section 203 by failing to pay all wages due upon separation. Mr. Mott's final paycheck was a paper check not accompanied by a paystub, so he could not view his total hours worked, the rates, tax deductions and contributions. Additionally, Claimants incurred necessary, business-related expenses for cell phone service required to access work schedules and to communicate by phone and text with Human Resources on non-workdays. Mr. Mott is informed and believes that such violations are ongoing, systematic, and continuous. He intends to bring an action against Jack's Restaurant under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Mr. Mott was employed continuously by Jack's Restaurant as a server from approximately April 16, 2022 through approximately November 27, 2022. The position of server

¹ Without limitation, Mr. Mott, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

generally entails greeting patrons; assisting patrons with the menu; taking and food and drink orders, including alcoholic beverages; running food and drinks to patrons; checking to ensure each patron's order is fulfilled; providing drink refills and additional requests from customers; bussing tables; processing payments; cutting and preparing bread; making espresso drinks; cleaning the espresso maker; restocking cups, plates, and silverware at the side station; and wiping down the side station area. For a period of at least four (4) years prior to December 2022, but for our purposes here, one (1) year, Jack's Restaurant has failed and continues to fail to pay such employees all overtime wages, yet regularly requires and has required employees to work in excess of eight (8) hours per workday and/or forty (40) hours per workweek without adequate pay under Labor Code section 1194.

Claimants also were at all times entitled to the payment of minimum wages. Jack's Restaurant has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and IWC Wage Order 5-2001, section 4. For instance, due to poor management and understaffing combined with time-sensitive patron demands, Claimants were not able to take rest breaks and had to remain on duty during those rest breaks because they were needed and short-staffed and had a policy to not provide rest breaks. This policy causes Claimants to remain on duty during rest breaks, and therefore, constitutes a failure on Jack's Restaurant's part to provide compliant rest breaks. With that, Jack's Restaurant's corresponding failure to provide premium pay in lieu of compliant rest breaks constitutes Jack's Restaurant's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Similarly, in other instances, Claimants were and are unable to take their rest breaks and in turn, continue to work through their rest breaks. Jack's Restaurant's failure to pay Claimants meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. In addition to off-the-clock time worked but not ultimately paid at the start and end of shifts, not all hours that Claimants worked were recorded, adjusted, nor subsequently compensated. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and IWC Wage Order 5-1001, section 20.

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Jack's Restaurant's was required to compensate Claimants at a rate of 1.5 times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Jack's Restaurant's has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that would have been eligible for overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Jack's Restaurant's failed to provide Mr. Mott and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 5-2001, section 3.

Claimants were at all times entitled to off-duty, uninterrupted unpaid meal periods. Jack's Restaurant failed to provide meal periods to Mr. Mott and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and IWC Wage Order 5-2001, section 11. Mr. Mott and all similarly aggrieved persons took their meal periods late, had their meal periods interrupted, and remained on duty as they were required to perform work during their meal periods. And Jack's Restaurant did not compensate Claimants with an extra hour of pay for noncompliant meal periods for each workday on which they occurred. Accordingly, since Jack's Restaurant required Mr. Mott and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, IWC Wage Order 5-2001, section 20, and 2699(f).

Claimants were at all times entitled to take paid off duty rest breaks. However, Jack's Restaurant failed to authorize and permit off duty rest breaks to be taken by Mr. Mott and all other similarly aggrieved employees engaged in the same tasks and function as required by Labor Code sections 226.7 and IWC Wage Order 5-2001, section 12. This was largely due to understaffing combined with time-sensitive patron demands. Mr. Mott and all similarly aggrieved persons were required to perform work during their rest breaks by either taking no break or else had to remain on call and therefore, on duty, during their rest breaks. Jack's Restaurant did not compensate Claimants with an extra hour of pay for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and IWC Wage Order 5-2001, section 20. Furthermore, since Jack's Restaurant required its non-exempt employees to work during rest periods in violation of Labor Code section 226.7(b), Claimants seek as all available penalties as set forth in Labor Code sections 558 and 2699.

Claimants were at all times entitled to be provided timely and accurate wage statements from Jack's Restaurant pursuant to Labor Code section 226. Because Jack's Restaurant failed to pay Claimants their rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked and overtime wages, Claimants' wage statements were inaccurate in reflecting meal period and rest break premium compensation owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of gross wages owed. Claimants' wage statements also do not reflect the correct business address as it appears on the California Secretary of State website. For instance, Mr. Mott's wage statements show the address of 42 Hamar Street, Pleasant Hill, California 94523, while the SOS website shows Jacks NW LLC address as 1700 South El Camino Real, Suite 210, San Mateo, California 94402. Finally, Claimants' payment of final wages are paid via paper checks and not accompanied by paystubs that contain all requisite payment information and deduction detail. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Jack's Restaurant for all necessary, business-related expenses they incurred in executing their duties for Jack's Restaurant. California Labor Code section 2802 provides that "An employer shall indemnify his or her employee for all

necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Jack's Restaurant, however, has failed to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the expense of the cell phones required for communicating with Jack's Restaurant on days off and for accessing work schedules through the application HotSchedules. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Jack's Restaurant's uniform failure to pay overtime and minimum wages, failure to authorize and permit off duty rest breaks or pay Claimants premium compensation in lieu thereof, and failure to furnish timely and accurate wage statements violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Mott, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Jack's Restaurant for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in cursive script, reading "Cheryl Kenner".

Cheryl A. Kenner