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Case #22CV409086
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

CLAUDINE DE LA TORRE, as an
aggrieved employee pursuant to the Private
Attorneys General Act (“PAGA”), on
behalf of the State of California and other
non-party Aggrieved Employees,

Plaintiff,

vs.

PACIFIC BELLS, LLC, a Washington
limited liability company; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 22CV409086

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

1 Plaintiff Claudine De La Torre, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action brought under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Defendants in California as non-exempt, hourly
8 paid employees and received at least one wage statement and against whom one or more
9 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
10 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
11 Wage Order were committed, as set forth in this complaint, as set forth in this complaint, at any
12 time between one year prior to the filing of the pre-filing written notice to the Labor and
13 Workforce Development Agency (“LWDA”) in this case on January 23, 2023, until judgment
14 (“non-party Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action
15 does not exceed \$75,000.

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

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

1 suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons within the
3 County of Santa Clara, and have violated the requirements of the California Labor Code and
4 applicable Wage Order in this county which give rise to the penalties sought in this action. Cal.
5 Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California
6 Labor Code and applicable IWC Wage Order in at least one location within the County of Santa
7 Clara, including Defendants' restaurant in Los Gatos (16150 Los Gatos Boulevard, Los Gatos,
8 California 95032). Pursuant to California Civil Code of Procedure section 393, venue is proper
9 for the recovery of a penalty imposed by statute in the county in which the cause, or some part
10 of the cause, arose. Because Defendants have employees in Santa Clara County and Plaintiff
11 could bring an action under PAGA in any county in which an aggrieved employee worked and
12 Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v.*
13 *Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

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

18 THE PARTIES

19 6. Plaintiff Claudine De La Torre is a resident of Fresno, California. Defendants
20 employed Plaintiff as an hourly paid, non-exempt Cashier from approximately July 2021 to
21 November 2022. Plaintiff worked for Defendants at their restaurant location at 1612 Blackstone
22 Avenue in Fresno, California. During her employment, Plaintiff typically worked six (6) hours
23 or more per day, and five (5) days per week. Plaintiff's primary job duties included, without
24 limitation, cashiering, preparing customers' orders, washing dishes, and cleaning.

25 7. PACIFIC BELLS, LLC was and is, upon information and belief, a Washington
26 limited liability company, and at all times hereinafter mentioned, an employer whose employees
27 are engaged throughout this county, the State of California, or the various states of the United
28 States of America.

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

5 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
6 were the partners, agents, owners, or managers of PACIFIC BELLS, LLC at all relevant times.

7 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
8 acts and omissions alleged herein was performed by, or is attributable to, PACIFIC BELLS,
9 LLC and/or DOES 1 through 10 (collectively, “Defendants” or “PACIFIC BELLS”), each
10 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
11 each of the other co-Defendants and was acting within the course and scope of such agency,
12 employment, joint venture, or concerted activity with legal authority to act on the others’ behalf.
13 The acts of any and all Defendants were in accordance with, and represent, the official policy
14 of Defendants.

15 11. At all relevant times, Defendants, and each of them, ratified each and every act
16 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
17 and abetted the acts and omissions of each and all the other Defendants in proximately causing
18 the damages herein alleged.

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

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 13. Defendants own and operate a chain of over 270 Taco Bell franchise restaurants
24 across nine (9) states in the United States, with approximately 61 Taco Bell restaurant locations
25 throughout California. Upon information and belief, Defendants maintain a single, centralized
26 Human Resources (“HR”) department at their corporate headquarters in Vancouver,
27 Washington, which is responsible for the recruiting and hiring of new employees, and
28 communicating and implementing Defendants’ company-wide policies, including timekeeping

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

2 14. In particular, Plaintiff and other non-party Aggrieved Employees, on information
3 and belief, received the same standardized documents and/or written policies. Upon
4 information and belief, the usage of standardized documents and/or written policies, including
5 new-hire documents, indicate that Defendants dictated policies at the corporate level and
6 implemented them company-wide, regardless of their employees' assigned locations or
7 positions.

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

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

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

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

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

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

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

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

22 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
24 periods in accordance with the California Labor Code and applicable IWC Wage Order or
25 payment of one (1) additional hour of pay at their regular rates of pay when they were not
26 authorized and permitted to take a compliant rest period. In violation of the California Labor
27 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
28 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved

1 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
2 they were not authorized and permitted to take a compliant rest period.

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

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

12 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that they were required to comply with requests from Plaintiff and other
14 non-party Aggrieved Employees to inspect or receive a copy of their wage records within 21
15 days in accordance with the California Labor Code and applicable IWC Wage Order, but
16 willfully, knowingly, and intentionally failed to do so.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 receive copies of instruments that they signed upon request. In violation of the California Labor
20 Code, Defendants denied Plaintiff and other non-party Aggrieved Employees their right to
21 obtain copies of instruments that they signed.

22 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive copies of their personnel records no later than 30 days from the date Defendants receive
25 a written request. In violation of the California Labor Code, Defendants denied Plaintiff and
26 other non-party Aggrieved Employees their right to obtain copies of their personnel records
27 within the statutory time limits.

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

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 timely payment of wages during their employment. In violation of the California Labor Code,
3 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
4 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
5 and/or reporting time pay, within permissible time periods.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 timely payment of all wages earned upon termination of employment. In violation of the
9 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
10 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
11 and rest period premiums, and/or reporting time pay, within permissible time periods.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 receive all reporting time pay when Plaintiff and other non-party Aggrieved Employees were
15 required to report to work but were put to work for less than half of their usual or scheduled
16 shift. In violation of the California Labor Code and applicable IWC Wage Order, Plaintiff and
17 other non-party Aggrieved Employees were not paid all reporting time pay.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive full reimbursement for all business-related expenses and costs they incurred during the
21 course and scope of their employment and that they did not receive full reimbursement of
22 applicable business-related expenses and costs incurred.

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

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

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

35. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

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

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

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

- 2 (c) The LWDA shall notify the employer and the aggrieved employee or
3 representative by certified mail that it does not intend to investigate the
4 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
5 postmark date of the aggrieved employee’s notice. Upon receipt of the
6 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
7 calendar days of the postmark date of the aggrieved employee’s notice,
8 the aggrieved employee may commence a civil action pursuant to
9 California Labor Code section 2699 to recover civil penalties.

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

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of the
15 specific provisions of the California Labor Code alleged to have been
16 violated (other than those listed in Section 2699.5), including the facts
17 and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be accompanied
20 by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged violation
26 is cured, including a description of actions taken, and no civil action
27 pursuant to Section 2699 may commence. If the alleged violation is not
28 cured within the 33-day period, the aggrieved employee may commence

1 a civil action pursuant to Section 2699.

2 40. On January 23, 2023, Plaintiff provided written notice by online filing to the
3 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
6 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
7 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
8 PAGA Case Number LWDA-CM-931165-23. A true and correct copy of Plaintiff's written
9 notice to the LWDA and Defendants dated January 23, 2023, is attached hereto as "Exhibit 1."

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

13 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 432, 510, 512(a),
16 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, and 2810.5.

17 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
18 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare Commission
20 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
21 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
22 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
23 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
24 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
25 criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney
26 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
27 herself, all other non-party Aggrieved Employees, and the State of California against
28 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable

1 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
2 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
3 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage Order.

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

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

10 46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
11 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
12 private attorney general, seeks assessment and collection of civil penalties for herself, all other
13 aggrieved employees, and the State of California against Defendants for violations of California
14 Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12,
15 1194, 1197, 1198, 1198.5, 2802, and 2810.5.

16 **FIRST CAUSE OF ACTION**

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

18 **(Against all Defendants)**

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

21 48. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
22 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
23 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 510, 512(a),
24 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
25 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
26 sections not found in section 2699.5, including sections 226(b)-(c), 432, 516, 1182.12, 1198.5,
27 and 2810.5.

28 49. Defendants' conduct, as alleged herein, violates numerous sections of the

1 California Labor Code, including, but not limited to, the following:

- 2 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
3 Wage Order for Defendants' failure to compensate Plaintiff and other
4 non-party Aggrieved Employees with all required overtime pay, as set
5 forth below;
- 6 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable
7 IWC Wage Order for Defendants' failure to include all forms of
8 remuneration in the "regular rate" of pay as required by law for purposes
9 of paying overtime wages and/or meal and rest period premiums to other
10 non-party Aggrieved Employees, as set forth below;
- 11 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to compensate
13 Plaintiff and other non-party Aggrieved Employees with at least
14 minimum wages for all hours worked, as set forth below;
- 15 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
17 and other non-party Aggrieved Employees with meal periods, as set forth
18 below;
- 19 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
20 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
21 and other non-party Aggrieved Employees to take rest periods, as set forth
22 below;
- 23 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
24 IWC Wage Order for failure to provide accurate and complete wage
25 statements to Plaintiff and other non-party Aggrieved Employees, as set
26 forth below;
- 27 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
28 IWC Wage Order for failure to maintain payroll records, as set forth

below;

- (h) Violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order for failure to produce copies or allow inspection of Plaintiff's and other non-party Aggrieved Employees' own personnel and other employment records upon written request within the statutory time limits, as set forth below;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;
- (j) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to pay reporting time pay to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

51. California Labor Code section 1198 and the applicable IWC Wage Order provide

1 that it is unlawful to employ persons without compensating them at a rate of pay either time-
2 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
3 worked by the person on a daily or weekly basis.

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

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

14 54. California Labor Code section 510 codifies the right to overtime compensation
15 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
16 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
17 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
18 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
19 the seventh (7th) day of work.

20 55. During the relevant time period, Defendants willfully failed to pay all overtime
21 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
22 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
23 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
24 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
25 not recorded.

26 56. First, Defendants had, and continue to have, a company-wide policy and/or
27 practice of requiring Plaintiff and other non-party Aggrieved Employees to perform various
28 work-related tasks while off-the-clock before and after their shifts. For example, before

1 clocking in, Plaintiff was required to spend was required to spend 15-30 minutes complete tasks,
2 such as attending to customers who had been waiting in the drive-thru window, as the other
3 employees available were busy preparing food or unloading inventory being delivered to
4 Defendants' restaurant. Additionally, it was not possible for Plaintiff and other non-party
5 Aggrieved Employees to complete these tasks on the clock because, on information and belief,
6 Defendants implemented a timekeeping system that would not permit Plaintiff and other non-
7 party Aggrieved Employees to clock in before their scheduled shifts so that they were prevented
8 from recording time worked prior to the start of their scheduled shifts. As another example,
9 Plaintiff sometimes clocked out at the end of her shift, but was required to continue working—
10 such as washing dishes or preparing food orders—in order to reduce the number of customers
11 waiting in the drive-thru line during a rush of customer traffic. Thus, Defendants failed to track
12 all of the time that employees spent performing work-related tasks outside of their shifts, and
13 Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

14 57. Second, on information and belief, Defendants had, and continue to have, a
15 company-wide policy and/or practice of strictly staffing their restaurant locations based on the
16 labor hours allocated by each location's labor or payroll budget set by corporate. On
17 information and belief, Defendants' uniform use of labor budgets resulted in chronic
18 understaffing and a lack of adequate meal period coverage, because there were too few
19 employees on duty to handle the workload and attend to customers, which included meeting a
20 120-second time target/goal for drive-thru customers. As a result of this lack of meal period
21 coverage, Plaintiff and other non-party Aggrieved Employees were not always afforded
22 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
23 period. Moreover, Defendants have a practice of failing to schedule meal periods and/or failing
24 to adhere to a schedule for meal periods, which further caused Plaintiff and other non-party
25 Aggrieved Employees to not be relieved of their duties for compliant meal periods.
26 Consequently, Plaintiff and other non-party Aggrieved Employees were required to work
27 through and/or had their unpaid meal periods interrupted in order to complete their assigned
28 duties and handle customer demand, time for which they were not paid.

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

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

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

25 61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
26 the balance of overtime compensation as required by California law, violates the provisions of
27 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
28 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558

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

FAILURE TO PAY MINIMUM WAGES

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

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

63. First, as stated above, Defendants had a company-wide policy and/or practice requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related tasks while off-the-clock before and after their shifts, including completing tasks before their shifts, and washing dishes and preparing customer food orders after clocking out. Moreover, Defendants’ timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording time worked prior to the start of their scheduled shifts because it did not permit employees from clocking in until their scheduled shift start-times. Thus, Defendants failed to track this time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

64. Second, as set forth above, due to Defendants’ uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods, because Defendants’ timekeeping system locked out Plaintiff and other non-party Aggrieved Employees

1 for 30 minutes when they clocked out for a meal period.

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

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

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

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

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

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

23 69. At all relevant times herein set forth, California Labor Code sections 226.7,
24 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
25 meal period mandated by an applicable order of the IWC.

26 70. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
27 the applicable IWC Wage Order also require employers to provide a second meal period of not
28 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an

1 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
2 hours worked is no more than twelve (12) hours, the second meal period may be waived by
3 mutual consent of the employer and the employee only if the first meal period was not waived.

4 71. During the relevant time period, as set forth above, Defendants had, and continue
5 to have, a company-wide policy and/or practice of understaffing restaurant locations due to
6 labor budgeting and/or limited payroll allocation, which, combined with the assignment of
7 heavy workloads (including time/targets for drive-thru customers), and failure to schedule meal
8 periods and/or adhere to a schedule for meal periods, has resulted in a lack of meal period
9 coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all
10 timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff and other
11 non-party Aggrieved Employees had to work through all or part of their meal periods, had their
12 meal periods interrupted, and/or had to wait extended periods of time before taking meal
13 periods. For example, about four (4) times a week, Plaintiff was required to work during her
14 meal periods or could not take her meal periods until the sixth hour of her shift, due to the heavy
15 workload and lack of coverage.

16 72. Also, as stated, Defendants' company-wide timekeeping system prevented
17 Plaintiff and other non-party Aggrieved Employees from recording when their meal periods
18 were shortened or interrupted, because the system locked out Plaintiff and other non-party
19 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
20 clock back in from a meal period before 30 minutes had elapsed. For example, Plaintiff's meal
21 periods were sometimes interrupted or cut short because she was required to prepare food orders
22 and attend to customers who had been waiting in the drive-thru line or by the front-end registers.

23 73. Additionally, Defendants did not provide other non-party Aggrieved Employees
24 with second meal periods on days that they worked in excess of 10 hours in one day. Plaintiff
25 and other non-party Aggrieved Employees did not sign valid meal period waivers on days that
26 they were entitled to meal periods and were not relieved of all duties.

27 74. At all times herein mentioned, Defendants knew or should have known that, as a
28 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented from

1 being relieved of all duties and required to perform some of their assigned duties during meal
2 periods. Defendants further knew or should have known that Defendants did not pay Plaintiff
3 and other non-party Aggrieved Employees all meal period premiums when meal periods were
4 late, missed, shortened, or interrupted.

5 75. Furthermore, Defendants engaged in a company-wide practice and/or policy of
6 not paying all meal period premiums owed when compliant meal periods were not provided.
7 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
8 not received all premium pay for missed, late, and interrupted meal periods. Alternatively, to
9 the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
10 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
11 Employees the correct rate of pay for premiums because Defendants systematically failed to
12 include all forms of compensation such as incentive pay and/or nondiscretionary bonuses,
13 and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

23 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very
24 employer shall authorize and permit all employees to take rest periods, which insofar as
25 practicable shall be in the middle of each work period" and that the "rest period time shall be
26 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
27 hours or major fraction thereof" unless the total daily work time is less than three and one-half
28 (3 ½) hours.

1 79. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest periods
4 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
5 must “relinquish any control over how employees spend their break time, and relieve their
6 employees of all duties—including the obligation that an employee remain on call. A rest
7 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
8 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
9 section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover
10 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
11 that a required rest period was not authorized and permitted.

12 80. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
14 per each four (4) hour period worked or major fraction thereof. As with meal periods,
15 Defendants’ company-wide use of labor budgeting and/or limited payroll allocation,
16 understaffing, assigning heavy workloads, and failing to schedule rest periods and/or adhere to
17 a schedule for rest periods, resulted in a lack of rest period coverage and prevented Plaintiff and
18 other non-party Aggrieved Employees from being relieved of all duty in order to take compliant
19 rest periods.

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

28 82. As a result of Defendants’ practices and policies, Plaintiff and other non-party

1 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
2 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
3 entitled. For example, Plaintiff had to forego approximately five (5) of her rest periods per
4 week because the restaurant was busy and did not provide sufficient coverage. When Plaintiff
5 was able to take her rest periods, they were often interrupted because she was required to attend
6 to customers who had been waiting for their food orders and assist her coworkers with washing
7 dishes.

8 83. Defendants have also engaged in a systematic, company-wide practice and/or
9 policy of not paying rest period premiums owed when rest periods are not authorized and
10 permitted. As a result of this practice and/or policy, Plaintiff and other non-party Aggrieved
11 Employees have not received premium pay for all missed rest periods. Alternatively, to the
12 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
13 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
14 Employees at the correct rate of pay for premiums because Defendants failed to include all
15 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
16 remuneration, in the regular rate of pay.

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

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

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

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

1 86. At all relevant times, Defendants have knowingly and intentionally provided
2 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate
3 wage statements. For example, Defendants issued uniform wage statements to Plaintiff and
4 other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours
5 worked; net wages earned; and all applicable hourly rates in effect during the pay period,
6 including rates of pay for overtime wages and/or meal and rest period premiums, and the
7 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
8 sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

9 87. Because Defendants did not accurately record the time Plaintiff and other non-
10 party Aggrieved Employees spent working off-the-clock and deducted time from their records
11 for meal periods that were interrupted and/or missed (and therefore time for which they should
12 have been paid), Defendants did not list the correct amount of gross wages and net wages earned
13 by Plaintiff and other non-party Aggrieved Employees in compliance with sections 226(a)(1)
14 and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of
15 hours worked by Plaintiff and other non-party Aggrieved Employees in violation of section
16 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and
17 corresponding accurate number of work hours worked at each hourly rate in violation of section
18 226(a)(9).

19 88. Additionally, because Defendants did not calculate other non-party Aggrieved
20 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
21 and rest period premiums, Defendants did not list the correct amount of gross wages in
22 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
23 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect
24 during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest
25 period premiums, in violation of section 226(a)(9).

26 89. The wage statement deficiencies also include, without limitation, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
28 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for

1 which employees were paid; failing to list the name of the employee and only the last four digits
2 of his or her social security number or an employee identification number other than a social
3 security number; failing to list the name and address of the legal entity that is the employer;
4 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
5 the-clock.

6 90. California Labor Code section 1174(d) provides that “[e]very person employing
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
8 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
9 plants or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
13 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
14 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
15 result of failing to record the off-the-clock hours that they worked.

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

1 92. Defendants' conduct violates California Labor Code sections 226(a), 1174(d),
2 and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover
3 civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

4 **FAILURE TO PRODUCE AND/OR PERMIT INSPECTION OF RECORDS AND**
5 **INSTRUMENTS SIGNED**

6 **VIOLATION OF LABOR CODE SECTIONS 226(b)-(c), 432, 1198, AND 1198.5**

7 93. At all relevant times herein, California Labor Code section 226(b) provides that
8 every employer shall furnish current and former employees the right to inspect or copy records
9 pertaining to their employment, upon reasonable request to the employer. Labor Code Section
10 226(c) provides that an employer must comply with a request made pursuant to Labor Code
11 section 226(b) no later than 21 calendar days from the date of the employee's request.

12 94. At all relevant times herein, California Labor Code section 432 states "[i]f an
13 employee or applicant signs any instrument relating to the obtaining or holding of employment,
14 he shall be given a copy of the instrument upon request." California Labor Code section 433
15 states "[a]ny person violating this article is guilty of a misdemeanor.

16 95. At all relevant times herein, California Labor Code section 1198.5 requires that
17 an employer provide a copy of an employee's personnel record no later than 30 days from the
18 date the employer receives a written request.

19 96. IWC Wage Order No. 5-2001, subdivision 7(A), provides "[e]very employer
20 shall keep accurate information with respect to each employee including the following: (1) Full
21 name, home address, occupation and social security number. (2) Birth date, if under 18 years,
22 and designation as a minor. (3) Time records showing when the employee begins and ends each
23 work period. Meal periods, split shift intervals and total daily hours worked shall also be
24 recorded. Meal periods during which operations cease and authorized rest periods need not be
25 recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other
26 compensation actually furnished to the employee. (5) Total hours worked in the payroll period
27 and applicable rates of pay. This information shall be made readily available to the employee
28 upon reasonable request." IWC Wage Order No. 5-2001, subdivision 7(C), also provides "[a]ll

1 required records shall be in the English language and in ink or other indelible form, properly
2 dated, showing month, day and year, and shall be kept on file by the employer for at least three
3 years at the place of employment or at a central location within the State of California. An
4 employee's records shall be available for inspection by the employee upon reasonable request.

5 97. During the relevant time period, Plaintiff sent Defendants a reasonable written
6 request for documents and records relating to her employment with Defendants. During the
7 relevant time period, Defendants failed to produce for inspection and copying or otherwise
8 permit inspection and copying of documents and records relating to Plaintiff's employment.
9 For example, on December 16, 2022, Plaintiff sent a written request to Defendants via FedEx
10 overnight mail. On December 19, 2022, FedEx confirmed Defendants received Plaintiff's
11 written request for records. However, Defendants have not sent Plaintiff's records. Thus, over
12 21 days passed from the date that Plaintiff sent Defendants a reasonable written request for
13 documents and records relating to her employment, and Defendants failed to comply with the
14 request within the requisite time period, in violation of Labor Code section 226(b) and the
15 applicable IWC Wage Order.

16 98. Defendants' conduct violates California Labor Code sections 226(b)-(c), 432,
17 1198, and 1198.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 226(f), 1198.5(k), and/or 2699(a), (f),
19 and(g).

20 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

21 **VIOLATION OF LABOR CODE SECTION 204**

22 99. At all times relevant herein set forth, Labor Code section 204 provides that all
23 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
24 days, inclusive, of any calendar month, other than those wages due upon termination of an
25 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
26 the month during which the labor was performed. Labor Code section 204 further provides that
27 all wages earned by any person in any employment between the sixteenth (16th) and the last
28 day, inclusive, of any calendar month, other than those wages due upon termination of an

employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

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

102. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees all wages due violates Labor Code section 204. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

104. On information and belief, Defendants have a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Alternatively,

1 Defendants have, on information and belief, a company-wide practice and/or policy of failing
2 to pay terminated employees their final wages. For example, Defendants terminated Plaintiff
3 on or about November 23, 2022, and, as of the date of the initial complaint, have not paid her
4 final wages owed. Thus, Defendants failed to pay Plaintiff and other non-party Aggrieved
5 Employees their final wages immediately, in violation of California Labor Code sections 201
6 or 202.

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

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

18 **FAILURE TO PAY REPORTING TIME PAY**
19 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
20 **REGULATIONS TITLE 8, SECTION 11050 SUBDIVISION 5(A)**

21 107. California Labor Code section 1198 dictates that no employer may employ an
22 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
23 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
24 fixed by the commission shall be the . . . standard conditions of labor for employees. The
25 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

26 108. The applicable IWC Wage Order, California Code of Regulations, Title 8,
27 section 11050(5)(A), provides that “[e]ach workday an employee is required to report for work
28 and does report, but is not put to work or is furnished less than half said employee's usual or

1 scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
2 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's
3 regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of
4 the reporting time regulation" is "to guarantee at least partial compensation for employees who
5 report to work expecting to work a specified number of hours, and who are deprived of that
6 amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v.*
7 *AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

8 109. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
10 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time pay
11 when they reported to work for their usual or scheduled shift but were put to work for less than
12 half of their usual or scheduled day's work.

13 110. Defendants had a company-wide practice of sending Plaintiff and other non-party
14 Aggrieved Employees home early from their shifts, including before they had worked at least
15 half of their usual or scheduled shift, but would not pay Plaintiff and other non-party Aggrieved
16 Employees for half of their scheduled shift. For example, Defendants' managers sent Plaintiff
17 home within three (3) hours from the start of her shift because business was slow, but Plaintiff
18 was only paid for the time she had worked. Although Plaintiff and other non-party Aggrieved
19 Employees reported to work based on the schedule that was provided to them, Defendants would
20 send them home before they worked at least half of their usual or scheduled shifts. When this
21 occurred, Defendants did not pay Plaintiff and other non-party Aggrieved Employees for at least
22 half of their scheduled day's work or the minimum reporting time pay.

23 111. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
24 properly compensated with reporting time pay in violation of California Labor Code section
25 1198 and California Code of Regulations, Title 8, section 11150(5)(A). Plaintiff and class
26 members are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 2699(a), (f), and (g).

28 ///

1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

3 112. California Labor Code section 2802 provides that an employer must reimburse
4 employees for all necessary expenditures and losses incurred by the employee in the
5 performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers
6 from passing off their cost of doing business and operating expenses on to their employees.
7 *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App 4th 1137, 1144 (2014). The applicable
8 wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen the employer requires the use
9 of tools or equipment or they are necessary to the performance of a job, such tools and
10 equipment shall be provided and maintained by the employer, except that an employee whose
11 wages are at least two (2) times the minimum wage may provide and maintain hand tools and
12 equipment customarily required by the particular trade or craft.” IWC Wage Order No. 5-2001
13 also provides that: “[w]hen uniforms are required by the employer to be worn by the employee
14 as a condition of employment, such uniforms shall be provided and maintained by the
15 employer.”

16 113. During the relevant time period, Defendants, on a company-wide basis, required
17 that Plaintiff and other non-party Aggrieved Employees use their own personal mobile devices,
18 including, but not limited to, cellular phones, and/or mobile data to carry out their job duties,
19 but failed to reimburse them for the costs of their work-related mobile device expenses. For
20 example, Plaintiff and other non-party Aggrieved Employees were required to use their personal
21 mobile devices for work-related tasks, including responding to calls or text messages or receive
22 work-related announcements. Specifically, Plaintiff used her personal cellular phone to respond
23 to calls or text messages from her managers and was required to download the mobile
24 application, “Crew,” to her personal cellular phone to receive announcements from managers.
25 Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize
26 their personal mobile devices and/or mobile data to carry out their work-related responsibilities,
27 Defendants failed to reimburse them for these costs.

28 114. Second, Defendants had a company-wide policy of requiring Plaintiff and other

1 non-party Aggrieved Employees to utilize their own personal vehicles or obtain alternate
2 transportation to carry out company business, but failed to reimburse them for all costs of travel,
3 including mileage. For example, Plaintiff was required to drive her own vehicle to a nearby
4 supermarket, to obtain tools or equipment for work-related tasks, such as scissors for opening
5 bags of inventory delivered to the restaurant. Similarly, on information and belief, other non-
6 party Aggrieved Employees were required to travel to Defendants' other restaurant locations to
7 pick up food ingredients or restaurant supplies. Although Defendants required Plaintiff and
8 other non-party Aggrieved Employees to utilize their own vehicles or obtain alternate
9 transportation to carry out their work-related responsibilities, Defendants did not reimburse
10 them for their travel expenses.

11 115. Third, during the relevant time period, Defendants required Plaintiff and other
12 non-party Aggrieved Employees to wear uniforms bearing the "Taco Bell" company logo,
13 including t-shirts, hats, and aprons. However, Defendants did not provide their employees with
14 sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only
15 provided Plaintiff with two (2) t-shirts, one (1) hat, and one (1) apron at the time of hire.
16 Because Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with
17 an adequate number of uniform items in relation to their scheduled shifts and for the tasks they
18 were required to perform, Plaintiff and other non-party Aggrieved Employees had to wash their
19 uniforms more frequently than they otherwise do laundry, and incur expenses in doing so.
20 Further, due to the nature of restaurant work, Plaintiff's uniform shirts would become stained
21 with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was required to
22 wash her uniforms items more frequently, thus incurring additional laundry expenses for the
23 upkeep of her uniform. Thus, Defendants failed to maintain uniforms they required Plaintiff
24 and other non-party Aggrieved Employees to wear during their shifts and forced them to incur
25 the cost of maintaining employee uniforms.

26 116. Defendants could have provided Plaintiff and other non-party Aggrieved
27 Employees with the actual equipment for use on the job, such as company mobile devices,
28 company vehicles, or an adequate number of uniform items or access to laundering services; or,

1 Defendants could have reimbursed employees for the costs of their mobile device usage,
2 mileage and travel expenses, and laundering expenses or provided a uniform maintenance
3 allowance. Instead, Defendants passed these operating costs off onto Plaintiff and other non-
4 party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times
5 the minimum wage.

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

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

12 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
13 **EMPLOYMENT**

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

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

25 120. Durin the relevant time period, Defendants failed to provide Plaintiff and other
26 non-party Aggrieved Employees with written notice that lists all the requisite information set
27 forth in Labor Code section 2810.5(a)(1)(A)-(C).

28 121. Defendants' failure to provide Plaintiff and other non-party Aggrieved

1 Employees with written notice of basic information regarding their employment with
2 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
3 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
4 Code sections 2699(a), (f), and (g).

5 **REQUEST FOR JURY TRIAL**

6 Plaintiff requests a trial by jury.

7 **PRAYER FOR RELIEF**

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

10 1. For civil penalties, and attorneys' fees in excess of twenty-five thousand dollars
11 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

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

13 2. That the Court declare, adjudge and decree that Defendants violated the
14 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
15 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
16 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
17 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198
18 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198
19 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
20 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
21 maintain accurate payroll records); 226(b)-(c), 432, 1198, and 1198.5 (by failing to produce
22 copies or allow inspection of records and instruments signed); 204 (by failing to timely pay all
23 earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
24 termination); 1198 and the applicable IWC Wage Order (by failing to pay reporting time pay;
25 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written
26 notice of information material to employment);

27 3. For civil penalties pursuant to California Labor Code sections 210, 226(f), 226.3,
28 256, 558, 1174.5, 1198.5(k), and/or 2699(a), (f), and (g), for violations of California Labor Code

sections 201, 202, 204, 226(a)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

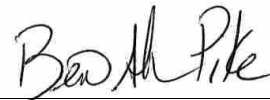
5. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: April 3, 2023,

Respectfully submitted,

Capstone Law APC

By: 

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Claudine De La Torre

EXHIBIT “1”

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

January 23, 2023

VIA ONLINE SUBMISSION

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

Subject: *Claudine De La Torre v. Pacific Bells, LLC*

Dear PAGA Administrator:

This office represents Claudine De La Torre in connection with her claims under the California Labor Code. Ms. De La Torre was an employee of PACIFIC BELLS, LLC (“PACIFIC BELLS”).

The employer may be contacted directly at the address below:

PACIFIC BELLS, LLC
111 W 39TH ST
VANCOUVER, WA 98660

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

PACIFIC BELLS employed Ms. De La Torre as an hourly paid, non-exempt employee from approximately July 2021 to November 2022. Ms. De La Torre worked as a Cashier at PACIFIC BELLS’s Taco Bell restaurant location in Fresno, California. Ms. De La Torre typically worked six (6) hours or more per day, and five (5) days per week. Ms. De La Torre was compensated approximately \$15.00 per hour. Her job duties included, without limitation, cashiering, preparing customers’ orders, washing dishes, and cleaning.

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

PACIFIC BELLS’s Company-Wide and Uniform Payroll and HR Practices

PACIFIC BELLS, LLC is a California corporation and owns and operates a chain of over 270 Taco Bell franchise restaurants across nine (9) states in the United States, with approximately 61 Taco Bell restaurant locations throughout California. Upon information and belief, PACIFIC BELLS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Vancouver, Washington, for all non-exempt, hourly paid employees working for PACIFIC BELLS in California, including Ms. De La Torre and other aggrieved employees. At all relevant times, PACIFIC BELLS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. De La Torre and other aggrieved employees, regardless of their location or position.

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

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

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

PACIFIC BELLS willfully failed to pay all overtime wages owed to Ms. De La Torre and other aggrieved employees. During the relevant time period, Ms. De La Torre and other aggrieved

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

employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of ten (10) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, PACIFIC BELLS had, and continues to have, a company-wide policy and/or practice of requiring Ms. De La Torre and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, before clocking in, Ms. De La Torre was required to spend 15-30 minutes completing tasks, such as attending to customers who had been waiting in the drive-thru window, as the other employees available were busy preparing food or unloading inventory being delivered to PACIFIC BELLS's restaurant. Additionally, it was not possible for Ms. De La Torre and other aggrieved employees to complete these tasks on the clock because, on information and belief, PACIFIC BELLS implemented a timekeeping system that would not permit Ms. De La Torre and other aggrieved employees to clock in before their scheduled shifts so that they were prevented from recording time worked prior to the start of their scheduled shifts. As another example, Ms. De La Torre sometimes clocked out at the end of her shift, but was required to continue working—such as washing dishes or preparing food orders—in order to reduce the number of customers waiting in the drive-thru line during a rush of customer traffic. Thus, PACIFIC BELLS failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Ms. De La Torre and other aggrieved employees received no compensation for this time.

Second, on information and belief, PACIFIC BELLS had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. On information and belief, PACIFIC BELLS's uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers, which included meeting a 120-second time target/goal for drive-thru customers. As a result of this lack of meal period coverage, Ms. De La Torre and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, PACIFIC BELLS had a practice of failing to schedule meal periods and/or failing to adhere to a schedule for meal periods, which further caused Ms. De La Torre and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Ms. De La Torre and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

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

PACIFIC BELLS knew or should have known that as a result of these company-wide practices and/or policies, Ms. De La Torre and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. De La Torre and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a

week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. De La Torre and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

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

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

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

First, as stated above, PACIFIC BELLS had a company-wide policy and/or practice requiring Ms. De La Torre and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including completing tasks before their shifts, and washing dishes and preparing customer food orders after clocking out. Moreover, PACIFIC BELLS's timekeeping system prevented Ms. De La Torre and other aggrieved employees from recording time worked prior to the start of their scheduled shifts because it did not permit employees from clocking in until their scheduled shift start-times. Thus, PACIFIC BELLS failed to track this time Ms. De La Torre and other aggrieved employees spent working off-the-clock, and Ms. De La Torre and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to PACIFIC BELLS's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. De La Torre and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Moreover, as stated, PACIFIC BELLS systematically failed to pay Ms. De La Torre and other aggrieved employees for actual hours worked during unpaid meal periods, because PACIFIC BELLS's timekeeping system locked out Ms. De La Torre and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Thus, PACIFIC BELLS did not pay at least minimum wages for all hours worked by Ms. De La Torre and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PACIFIC BELLS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

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

During the relevant time period, as set forth above, PACIFIC BELLS had, and continues to have, a company-wide policy and/or practice of understaffing restaurant locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads (including time/targets for drive-thru customers), and failure to schedule meal periods and/or adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Ms. De La Torre and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. De La Torre and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, about four (4) times a week, Ms. De La Torre was required to work during her meal periods or could not take her meal periods until the sixth hour of her shift, due to the heavy workload and lack of coverage.

Also, as stated, PACIFIC BELLS's company-wide timekeeping system prevented Ms. De La Torre and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Ms. De La Torre and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Ms. De La Torre's meal periods were sometimes

interrupted or cut short because she was required to prepare food orders and attend to customers who had been waiting in the drive-thru line or by the front-end registers.

Additionally, PACIFIC BELLS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Ms. De La Torre and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, PACIFIC BELLS knew or should have known that, as a result of these policies, Ms. De La Torre and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. PACIFIC BELLS further knew or should have known that it did not pay Ms. De La Torre and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, PACIFIC BELLS regularly failed to authorize and permit Ms. De La Torre and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, PACIFIC BELLS's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, assigning heavy workloads, and failing to schedule rest periods and/or adhere to a schedule for rest periods, resulted in a lack of rest period coverage and prevented Ms. De La Torre and other aggrieved employees from being relieved of all duty in order to take compliant rest periods.

Furthermore, upon information and belief, during the relevant time period, PACIFIC BELLS maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. De La Torre and other aggrieved employees remain on the work premises during their rest periods. Because Ms. De La Torre and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, PACIFIC BELLS effectively maintained control over Ms. De La Torre and other aggrieved employees during rest periods.

As a result of PACIFIC BELLS's practices and policies, Ms. De La Torre and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. De La Torre had to forego approximately five (5) of her rest periods per week because the restaurant was busy and did not provide sufficient coverage. When Ms. De La Torre was able to take her rest periods, they were often interrupted because she was required to attend to customers who had been waiting for their food orders and assist her coworkers with washing dishes.

PACIFIC BELLS has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. De La Torre and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PACIFIC BELLS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PACIFIC BELLS did not pay other aggrieved employees at the correct rate of pay for premiums because PACIFIC BELLS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h)

states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l).

IWC Wage Order No. 5-2001, subdivision 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.” IWC Wage Order No. 5-2001, subdivision 7(C), also provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant time period, Ms. De La Torre sent PACIFIC BELLS reasonable written requests for documents and records relating to her employment with PACIFIC BELLS. During the relevant time period, PACIFIC BELLS failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Ms. De La Torre’s employment. For example, on December 16, 2022, Ms. De La Torre sent a written request to PACIFIC BELLS via FedEx overnight mail. On December 19, 2022, FedEx confirmed PACIFIC BELLS received Ms. De La Torre’s written request for records. However, PACIFIC BELLS has not sent Ms. De La Torre’s records. Thus, over 21 days have passed from the date that Ms. De La Torre sent PACIFIC BELLS a reasonable written request for documents and records relating to her employment, and PACIFIC BELLS has failed to comply with the requests in violation of Labor Code section 226(b) and the applicable IWC Wage Order.

Ms. De La Torre and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 2699(a), (f)-(g).

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

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

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

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

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

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), PACIFIC BELLS willfully failed to maintain accurate payroll records for Ms. De La Torre and/or other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PACIFIC BELLS engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. De La Torre and other aggrieved employees, in violation of section 1198. Also, in light of PACIFIC BELLS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PACIFIC BELLS kept no records of meal start and end times for second meal periods.

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

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

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

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

During the relevant time period, PACIFIC BELLS willfully failed to pay Ms. De La Torre and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

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

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

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

On information and belief, PACIFIC BELLS has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Alternatively, PACIFIC BELLS has, on information and belief, a company-wide practice and/or policy of failing to pay terminated employees their final wages. For example, PACIFIC BELLS terminated Ms. De La Torre on or about November 23, 2022, and, as of the date of this notice, has not paid her final wages owed. Thus, PACIFIC BELLS failed to pay Ms. De La Torre and other aggrieved employees their final wages immediately, in violation of California Labor Code sections 201 or 202.

Additionally, PACIFIC BELLS willfully failed to pay Ms. De La Torre and other aggrieved employees who are no longer employed by PACIFIC BELLS the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving PACIFIC BELLS's employ.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)

hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, PACIFIC BELLS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because PACIFIC BELLS failed to pay Ms. De La Torre and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

PACIFIC BELLS had a company-wide practice of sending Ms. De La Torre and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. De La Torre and other aggrieved employees for half of their scheduled shift. For example, PACIFIC BELLS's managers sent Ms. De La Torre home within three (3) hours from the start of her shift because business was slow, but Ms. De La Torre was only paid for the time she had worked. Although Ms. De La Torre and other aggrieved employees reported to work based on the schedule that was provided to them, PACIFIC BELLS would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, PACIFIC BELLS did not pay Ms. De La Torre and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Ms. De La Torre and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, PACIFIC BELLS, on a company-wide basis, required that Ms. De La Torre and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. De La Torre and

other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages or receive work-related announcements. Specifically, Ms. De La Torre used her personal cellular phone to respond to calls or text messages from her managers and was required to download the mobile application, “Crew,” to her personal cellular phone to receive announcements from managers. Although PACIFIC BELLS required Ms. De La Torre and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PACIFIC BELLS failed to reimburse them for these costs.

Second, PACIFIC BELLS had a company-wide policy of requiring Ms. De La Torre and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. De La Torre was required to drive her own vehicle to a nearby supermarket, to obtain tools or equipment for work-related tasks, such as scissors for opening bags of inventory delivered to the restaurant. Similarly, on information and belief, other aggrieved employees were required to travel to PACIFIC BELLS’s other restaurant locations to pick up food ingredients or restaurant supplies. Although PACIFIC BELLS required Ms. De La Torre and other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, PACIFIC BELLS did not reimburse them for their travel expenses.

Third, during the relevant time period, PACIFIC BELLS required Ms. De La Torre and other aggrieved employees to wear uniforms bearing the “Taco Bell” company logo, including t-shirts, hats, and aprons. However, PACIFIC BELLS did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, PACIFIC BELLS only provided Ms. De La Torre with two (2) t-shirts, one (1) hat, and one (1) apron at the time of hire. Because PACIFIC BELLS failed to provide Ms. De La Torre and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. De La Torre and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Further, due to the nature of restaurant work, Ms. De La Torre’s uniform shirts would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was required to wash her uniforms items more frequently, thus incurring additional laundry expenses for the upkeep of her uniform. Thus, PACIFIC BELLS failed to maintain uniforms it required Ms. De La Torre and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PACIFIC BELLS could have provided Ms. De La Torre and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, or an adequate number of uniform items or access to laundering services; or, PACIFIC BELLS could have reimbursed employees for the costs of their mobile device usage, mileage and travel expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, PACIFIC BELLS passed these operating costs off onto Ms. De La Torre and other aggrieved employees. At all relevant times, Ms. De La Torre did not earn at least two (2) times the minimum wage.

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

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

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

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

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

California Labor Code § 558(a)

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

Accordingly, Ms. De La Torre seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. De La Torre, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against PACIFIC BELLS for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

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

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

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

Best Regards,



Anthony Castillo

Copy: PACIFIC BELLS, LLC (via U.S. Certified Mail)

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

CERTIFIED MAIL®



7022 2410 0000 2406 2945

PACIFIC BELLS, LLC
111 W 39TH ST
VANCOUVER, WA 98660

SENDER: COMPLETE THIS SECTION

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

PACIFIC BELLS, LLC
111 W 39TH ST
VANCOUVER, WA 98660



9590 9402 7690 2122 7166 41

2. Article Number (Transfer from service label)

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Priority Mail Express®
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Per U.S. Mail
Postmark

PACIFIC BELLS, LLC
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VANCOUVER, WA 98660

7022 2410 0000 2406 2945

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

PACIFIC BELLS, LLC
111 W 39TH ST
VANCOUVER, WA 98660



9590 9402 7690 2122 7166 41

2. Article Number (Transfer from service label)

7022 2410 0000 2406 2945

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Sharon Holger

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Sharon Holger

C. Date of Delivery

1-26-23

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

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☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **April 3, 2023**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original ☐ [or] ☒ a true copy thereof ☒ to interested parties as follows ☐ [or] ☐ as stated on the attached service list:

Arcelia N. Magaña (SBN: 312422)
arcelia.magana@jacksonlewis.com
Guillermo Escobedo (SBN: 206198)
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Attorneys for Defendant
PACIFIC BELLS, LLC

Anai Valenzuela
anai.valenzuela@jacksonlewis.com

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☒ **BY ELECTRONIC FILING:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 3, 2023**, at Los Angeles, California.

Xochitl Tapia

Type/Print Name



Signature