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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SILVIA ROMERO DE SANCHEZ, as the State
of California's proxy under the Private Attorneys
General Act,

Plaintiff,

vs.

THE POSH BAKERY INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. **23CV413084**

**REPRESENTATIVE ACTION
COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wage Violations
4. Wage Statement Violations
5. Waiting Time Penalties
6. Paid Sick Leave Violations
7. Recordkeeping Violations
8. Unlawful Employment Agreement Violations

1 Plaintiff SILVIA ROMERO DE SANCHEZ (“Plaintiff”), individually as the State of
2 California’s designated proxy under the Private Attorneys General Act (“PAGA”), and on behalf of
3 other current and former aggrieved employees, brings this representative action against THE POSH
4 BAKERY INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is filed by Plaintiff, an aggrieved employee, exclusively seeking civil penalties
7 under PAGA against Defendants for wage and hour violations of the California Labor Code.
8 Defendants employed Plaintiff and aggrieved employees in bakery and production positions but failed
9 to provide duty free rest periods and second meal periods (for shifts of ten hours or more) in the manner
10 required by the California Labor Code. On those occasions, Defendants did not pay Plaintiff and
11 aggrieved employees a meal or rest period premium.

12 2. As a result of these and other violations, Defendants failed to timely pay Plaintiff and
13 aggrieved employees wages, including sick pay and premiums, each pay period on paydays and upon
14 separation of employment, and thus are liable for waiting time and other statutory penalties.

15 3. Defendants’ employment policies and practices and payroll administration systems
16 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
17 employees.

18 **JURISDICTION & VENUE**

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

21 5. The monetary damages and restitution sought by Plaintiff exceed the minimal
22 jurisdiction limits of the Superior Court.

23 6. This Court has jurisdiction over Defendants because, upon information and belief,
24 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
25 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction
26 over them by the California courts consistent with traditional notions of fair play and substantial
27 justice.
28

7. Venue is proper in this Court under Code of Civil Procedure sections 393, 395, and 395.5 because Defendants conduct business and committed some of the alleged violations in this county.

PARTIES

A. Plaintiff Silvia Romero De Sanchez

8. Plaintiff Silvia Romero De Sanchez is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about October 2018 to August 2022. Plaintiff worked as a Machine Operator.

9. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

10. Defendant The Posh Bakery Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county. Defendant maintains its office at 20488 Stevens Creek Blvd, Cupertino, CA 95014.

11. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiff and is responsible in some manner for the acts and omissions alleged herein. Plaintiff may seek leave to amend this Complaint to reflect their true names and capacities once ascertained.

12. Plaintiff is informed, believes, and alleges that all Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of Plaintiff and other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as employees under California law. The acts and omissions of each defendant may be legally attributable to all others.

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

PAGA ALLEGATIONS

14. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on behalf of the State of California and the “aggrieved employees,” defined as follows:

a. All current and former hourly non-exempt who worked for Defendants in the State of California during one-year period preceding the date of this notice [January 9, 2022] through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”)

15. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

16. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the alleged Labor Code violations. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

17. “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on

1 behalf of himself or herself and other current or former employees pursuant to the procedures specified
2 in Section 2699.3.” (Labor Code § 2699(a)).

3 18. On January 6, 2023, Plaintiff gave written notice by online filing with the LWDA and
4 by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
5 violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).
6 Plaintiff paid the requisite filing fee to the LWDA. A true and correct copy of the PAGA Notice is
7 attached hereto as **Exhibit 1** and incorporated by reference.

8 19. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, Defendants
9 did not give written notice by certified mail to Plaintiff providing a description of any actions taken to
10 cure the alleged violations.

11 20. Now that at least 65 days have passed from Plaintiff first notifying Defendants of these
12 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to
13 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff exhausted
14 all prerequisites and commences this civil action under Labor Code § 2699.

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

18 **GENERAL ALLEGATIONS**

19 22. Defendants failed to provide second uninterrupted, duty-free meal periods to Plaintiff
20 of at least 30 minutes in length when their shifts exceeded 10 hours in length. On those occasions,
21 Defendants did not pay a meal period premium due, in violation of Labor Code section 226.7.

22 23. No second meal period waiver was in effect.

23 24. Defendants’ time records reflect the noncompliance with the second meal period
24 requirement. Defendants’ wage statements reflect a lack of meal period premiums at the lawful rate
25 of pay for when those second meal periods were not provided.

26 25. Additionally, Defendants had a policy and practice of not paying rest period premiums
27 to employees when they were due. Defendants required Plaintiff and other aggrieved employees to
28 effectively waive or otherwise forego their rest periods contrary to law. Defendants had an unlawful

1 policy and practice of not allowing Plaintiff and other aggrieved employees to use the restroom or take
2 water breaks when they were working.

3 26. Plaintiff's records show that Plaintiff consistently did not take rest periods nor was she
4 compensated any rest period premiums. Defendants' time records reflect Plaintiff's experience and
5 show 0.0 in the column for paid breaks. Although Defendants are not required to record paid 10-
6 minute rest breaks, they are required to provide them, which they did not as a matter of common
7 practice. Plaintiff and the aggrieved employees worked in systemic production positions where breaks
8 should have and could have been scheduled to ensure they were authorized. Instead, Defendants
9 expected employees to forgo 10-minute breaks, and forgo using the restroom until their first lunch.

10 27. Defendants failed to timely pay the meal and rest period premiums owed to Plaintiff
11 and aggrieved employees each pay period or upon separation of employment in violation of Labor
12 Code sections 201 to 203 (waiting time) and 204 and 204b (paydays), as a result of the foregoing
13 practices.

14 28. Defendants' failure to pay such premium payments each pay period or upon separation
15 of employment rendered the payments untimely and subject to civil penalties for the violations
16 committed against the aggrieved employees under Labor Code §§ 201 through 203.

17 29. Defendants failed to provide accurate itemized wage statements to the aggrieved
18 employees each pay period as a result of the policies and practices.

19 30. Specifically, Defendants violated Labor Code section 226(a)(1) and (5) by not listing
20 the correct "gross wages earned" or "net wages earned" on those statements because the amounts listed
21 failed to include and account for the unpaid meal and rest period premiums Plaintiff and the aggrieved
22 employees earned but were not paid.

23 31. Defendants also failed to pay Plaintiff and other aggrieved employees sick time in accordance
24 with California law. Employers must comply with the accrual, use, and notice provisions of Labor
25 Code sections 246, 246.5, 247, 248, and must further ensure that they maintain the paid sick leave
26 records required by Labor Code section 247.5. Employers have the option of providing 24 hours of
27 paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an
28 employer chooses the accrual method, employee must accrue sick leave at a rate of one hour for every

thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under section (b)(1)(3), an employer may use a different accrual method, but only if the method allows employees to accrue no less than 24 hours of accrued sick leave each calendar year. However, Defendants did not follow any lawful accrual method for sick pay, and thus both failed to provide sick time and inaccurately reported the sick time available to Plaintiff and other aggrieved employees.

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

33. The wage statement violations created significant confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

34. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have knowingly and intentionally caused harm to Plaintiff and aggrieved employees. Plaintiff is informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage Order by maintaining practices, policies, and customs that are inconsistent with their obligations under California Law.

FIRST CAUSE OF ACTION

MEAL PERIOD VIOLATIONS

Labor Code §§ 226.7, 512, 2698, *et seq.*

35. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

36. This cause of action is brought under PAGA for violations of the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of

1 action for an employer's failure to lawfully provide all meal periods and/or pay meal period premiums
2 at the lawful regular rate of compensation.

3 37. Defendants willfully failed in their affirmative obligation to consistently provide
4 Plaintiff and Aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
5 beginning before the fifth hour of hour for each work period of more than five hours per day and a
6 second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of
7 work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal
8 Periods" sections of the applicable orders).

9 38. Further, Defendants willfully failed in their affirmative obligation to consistently pay
10 Plaintiff and Aggrieved employees one additional hour of pay at the respective regular rate of
11 compensation for each workday that a fully compliant meal period was not provided, in violation of
12 Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods"
13 sections of the applicable orders).

14 39. Labor Code section 2699(f) provides: "For all provisions of this code except those
15 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
16 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one
17 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
18 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
19 pay period for each subsequent violation."

20 40. Labor Code section 558(a) provides: "Any employer or other person acting on behalf
21 of an employer who violates, or causes to be violated, a section of this chapter or any provision
22 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
23 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
24 employee for each pay period for which the employee was underpaid in addition to an amount
25 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
26 for each underpaid employee for each pay period for which the employee was underpaid in addition
27 to an amount sufficient to recover underpaid wages."

41. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SECOND CAUSE OF ACTION

REST PERIOD VIOLATIONS

Labor Code §§ 226.7, 1198, 516, 2698, *et seq.*

42. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

43. This cause of action is brought under PAGA for violations of the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

44. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and Aggrieved employees to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

45. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Aggrieved employees one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

46. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

1 **THIRD CAUSE OF ACTION**

2 **UNTIMELY PAYMENT OF WAGES**

3 **Labor Code §§ 204, 204b, 210, 218, 2698, *et seq.***

4 47. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 48. This cause of action is brought under PAGA for violations of the IWC Wage Orders
6 and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages
7 owed each pay period, and which further provide a private right of action for an employer's failure to
8 comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and
9 penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

10 49. Defendants willfully failed in their affirmative obligation to timely pay all wages,
11 including paid sick leave and meal and rest premiums, earned by Plaintiff and aggrieved employees
12 twice during each calendar month on days designated in advance by the employer as regular paydays
13 (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
14 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
15 "Minimum Wages" sections of the applicable orders).

16 50. Defendants are liability for the statutory penalty in the amount of \$100 for the initial
17 violation for each failure to pay each employee and \$200 for all subsequent violations and for all
18 willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount
19 unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and
20 costs to the extent permitted by law.

21 51. Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff,
22 the aggrieved employees and the State of California for civil penalties as required by Labor Code
23 sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
24 permitted by law, including under Labor Code section 2699(g).

25 **FOURTH CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **Labor Code § 226, 226.3, 2698, *et seq.***

28 52. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

53. This cause of action is brought under PAGA for violations of Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

54. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Aggrieved employees resulting in injury to Plaintiff and Aggrieved employees. Specifically, the wage statements issued to Plaintiff and Aggrieved employees did not accurately state each pay period and all of the information required by Labor Code § 226(a)(1)-(9).

55. Defendants' unlawful acts and omissions deprived Plaintiff and Aggrieved employees of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

56. Labor Code section 226.3 provides: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

57. As a result, Plaintiff and Aggrieved employees are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

58. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION**

3 **Violation of Labor Code §§ 201 *et seq.*, 2698 *et seq.***

4 59. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

5 60. This cause of action is brought under PAGA for violations of Labor Code §§ 201
6 through 203, which require an employer to timely pay all wages earned upon termination of
7 employment, and which further provide a private right of action to recover statutory waiting time
8 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
9 wages.

10 61. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
11 wages earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of
12 employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior
13 notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in
14 violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

15 62. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
16 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
17 Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
18 to the extent permitted by law, including under Labor Code section 2699(g).

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO PAY ALL PAID SICK LEAVE WAGES**

21 **Labor Code §§ 200, 218, 246, 2698 *et seq.***

22 63. All outside paragraphs of this Complaint are incorporated into this section.

23 64. This cause of action is brought under PAGA for violations of Labor Code section 246
24 *et seq.*

25 65. Labor Code section 246(l) governs how Defendants were required to calculate paid sick
26 leave:
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[A]n employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

66. Defendants failed to pay Plaintiff and the aggrieved employees their paid sick leave wages at one of the lawful rates set forth in the statute. *See* Exhibit A (PAGA Notice), pp. 3-4.

67. Furthermore, to the extent the paid sick leave paid constitutes Covid-related paid sick leave, Defendants knowingly and intentionally failed in their affirmative obligation to pay Covid-19 Supplemental Sick Leave wages to the aggrieved employees at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

68. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020 to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

69. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

1 70. Under Labor Code section 248.2, non-exempt employees must be paid supplemental
2 paid sick leave according to the highest of the following four methods:

3 (I) Calculated in the same manner as the regular rate of pay for the workweek in which
4 the covered employee uses COVID-19 supplemental paid sick leave, whether or not
5 the employee actually works overtime in that workweek.

6 (II) Calculated by dividing the covered employee's total wages, not including
7 overtime premium pay, by the employee's total hours worked in the full pay periods
8 of the prior 90 days of employment.

9 (III) The state minimum wage.

10 (IV) The local minimum wage to which the covered employee is entitled.

11 71. Labor Code section 248.6 requires employers to pay supplemental sick leave using
12 either method (I) or (II), as identified above.

13 72. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick
14 Leave in the manner described above because Defendants failed to include in their sick leave
15 calculation the additional remuneration received by the aggrieved employees.

16 73. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
17 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
18 Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
19 to the extent permitted by law, including under Labor Code section 2699(g).

20 **SEVENTH CAUSE OF ACTION**

21 **Recordkeeping Violations**

22 **Labor Code §§ 1174**

23 74. All outside paragraphs of this Complaint are incorporated into this section.

24 75. Labor Code section 1174 provides: "Every person employing labor in this state shall:
25 ... (d) Keep, at a central location in the state or at the plants or establishments at which employees are
26 employed, payroll records showing the hours worked daily by and the wages paid to, and the number
27 of piece-rate units earned by and any applicable piece rate paid to, employees employed at the
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1 respective plants or establishments. These records shall be kept in accordance with rules established
2 for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

3 76. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails
4 to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records
5 required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five hundred
6 dollars (\$500).”

7 77. Defendants willfully failed in their affirmative obligation to maintain accurate records
8 showing the hours worked daily and wages paid to the aggrieved employees, in violation of Labor
9 Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the applicable orders).

10 78. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
11 aggrieved employees and the State of California for civil penalties as required by Labor Code section
12 1174.5, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under
13 Labor Code section 2699(g).

14 **EIGHTH CAUSE OF ACTION**

15 **Unlawful Non-Competition Agreements**

16 **Labor Code §§ 432.5, 925, 2698 *et seq.***

17 79. All outside paragraphs of this Complaint are incorporated into this section.

18 80. This cause of action is brought under PAGA for violations of Labor Code Section
19 432.5, which states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall
20 require any employee or applicant for employment to agree, in writing, to any term or condition which
21 is known by such employer, agent, manager, superintendent, or officer thereof to be prohibited by
22 law.”

23 81. Business and Professions Code Section 16600 provides that “every contract by which
24 anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that
25 extent void.”

26 82. Defendants nonetheless required that Plaintiff and the aggrieved employees sign non-
27 competition agreements restricting their ability to accept certain work on behalf of themselves or other
28

1 employers. As such, Defendants violated California Labor Code section 432.5 by requiring that
2 Plaintiff and the aggrieved employees sign non-competition agreements prohibited by California law.

3 83. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
4 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants
5 pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the
6 extent permitted by law, including under Labor Code section 2699(g).

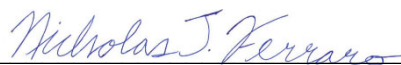
7 **PRAYER**

8 Plaintiff prays for judgment as follows:

- 9 a. For an award of all civil penalties under the Labor Code section 2698 *et seq.* and other
10 applicable Labor Code provisions;
11 b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to
12 the extent permitted by law, including under Labor Code section 2699(g);
13 c. For any recoverable pre- and post-judgment interest; and
14 d. For such other relief the Court deems just and proper.

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16 Dated: March 22, 2023

Ferraro Vega Employment Lawyers, Inc.

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18 Nicholas J. Ferraro

19 *Attorneys for Plaintiff Silvia Romero De Sanchez*

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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619-693-7727
619-350-6855 fax
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January 6, 2023

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

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

The Posh Bakery, Inc.
8806 Fruitridge Road
Sacramento, CA 95826

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

Dear LWDA Officer and Company Representatives:

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

THE POSH BAKERY, INC.

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

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

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices

affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Machine Operator from about October 2018 to August 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

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

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

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

- PAGA CLAIMS -

Unpaid Paid Sick Leave

Violation of Labor Code §§ 246 through 248.7

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

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, 248, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under section (b)(1)(3), an employer may use a

different accrual method, but only if the method allows employees to accrue no less than 24 hours of accrued sick leave each calendar year.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(i): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.”

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

Defendants failed to provide compliant and accurate paid sick leave hours in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and pay period during the PAGA period in which an employee was eligible for paid sick leave accrual. Specifically, as illustrated on the wage statement below for Plaintiff, Defendants did not properly calculate paid sick leave under the permissible accrual method each pay period:

Earnings Statement	Hours and Earnings		
		Current	YTD
Silvia Romero De Sanchez Redacted SSN: Redacted	56 Regular Hours \$15.00/hour	\$840.00	\$1,198.80
	7.58 Overtime Hours \$22.50/hour	\$170.55	\$249.30
	16 Sick Leave Hours \$15.00/hour	\$240.00	\$240.00
	Gross Pay	\$1,250.55	\$1,688.10
Pay Date Feb 11, 2022	Taxes and Adjustments		
	Federal Income Tax	\$82.00	\$82.00
	Employee Social Security	\$77.53	\$104.66
	Employee Medicare	\$18.14	\$24.48
Pay Period Jan 23, 2022 — Feb 5, 2022	CA State Income Tax	\$24.24	\$24.24
	CA State Disability Insurance	\$13.76	\$18.57
	Net Pay	\$1,034.88	\$1,434.15
	Payout Amounts		
SICK LEAVE Available: 8.79 hrs Accrued this pay period: 0.79 hrs Accrued this year: 0.79 hrs Used this pay period: 16 hrs Used this year: 16 hrs	Chase	\$1,034.88	

Extract from Plaintiff’s Wage Statement During the Pay Period January 23, 2022 to February 5, 2022

Under the accrual method in section 246, Plaintiff should have accrued 1-hour of paid sick leave for every 30 hours worked. In this pay period, Plaintiff worked a total of 63.58 hours

and incorrectly accrued only 0.79 hours. Based on Plaintiff's hours worked, she should have legally accrued about 2.12 hours. Alternatively, even if Defendant used a different accrual method, this method would not comply with Labor Code section 246(b)(1)(3)'s allowance.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code section §246(l)(1)-(3) and 248 *et seq.* was applied as a matter of common policy and practice to Plaintiff and the aggrieved employees, resulting in underpaid sick leave wages and earnings.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period

taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant second meal periods to Plaintiff and the aggrieved employees. Plaintiff and aggrieved employees often experienced missed, short, or late first and second meal periods in order to keep up with the demands of the job. Defendants had an unlawful policy and practice of not paying meal period premiums for non-compliant first and second meal periods.

Plaintiff and the aggrieved employees often worked over 10 hours with only one compliant meal period and were not provided a second meal period as required by Labor Code section 512 and the IWC Wage Orders. When Plaintiff worked more than 10 hours, Plaintiff was entitled to a second uninterrupted 30-minute unpaid meal break. When Defendants failed to provide a second paid meal period, Defendants also failed to compensate Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226.7.

An illustrative example of the Plaintiff's missed second meal period is found on Plaintiff's time records below:

Date	Clock-in	Date	Clock-Out	Date	Break-Start	Date	Break-End					Total Hours
6/7/2022	6:00:00 AM	6/7/2022	5:00:00 PM	6/7/2022	10:40:00 AM	6/7/2022	11:15:00 AM	0.58	0	8	2.42	10.42
6/8/2022	5:59:28 AM	6/8/2022	6:01:02 PM	6/8/2022	10:19:20 AM	6/8/2022	10:54:29 AM	0.58	0	8	3.45	11.45
6/9/2022	6:00:00 AM	6/9/2022	5:01:24 PM	6/9/2022	10:25:26 AM	6/9/2022	10:59:34 AM	0.57	0	8	2.45	10.45
6/10/2022	6:00:30 AM	6/10/2022	4:50:14 PM	6/10/2022	10:53:33 AM	6/10/2022	11:27:45 AM	0.57	0	8	2.27	10.27
6/13/2022	5:59:14 AM	6/13/2022	4:35:11 PM	6/13/2022	10:18:55 AM	6/13/2022	10:53:07 AM	0.58	0	8	2.02	10.02
6/14/2022	5:59:21 AM	6/14/2022	4:42:51 PM	6/14/2022	10:27:34 AM	6/14/2022	11:03:07 AM	0.6	0	8	2.12	10.12
6/15/2022	5:59:35 AM	6/15/2022	4:40:33 PM	6/15/2022	10:17:19 AM	6/15/2022	10:52:05 AM	0.58	0	8	2.1	10.1
6/16/2022	6:00:00 AM	6/16/2022	5:00:00 PM	6/16/2022	10:25:00 AM	6/16/2022	11:00:00 AM	0.58	0	8	2.42	10.42
6/17/2022	5:00:00 AM	6/17/2022	4:50:00 PM	6/17/2022	10:18:00 AM	6/17/2022	10:53:00 AM	0.58	0	8	3.25	11.25

Extract from Plaintiff's Time Records Showing She Did Not Take a Compliant Second Meal Period

Plaintiff's records show Plaintiff worked over 10 hours on each of these days, yet only took one meal period per day. First meal periods were tracked and are evidenced by each time Plaintiff clocked out during a shift and clocked back in roughly 30-minutes or 0.50 minutes later. Plaintiff's records do not show Plaintiff clocked out for a second meal period on the days she worked over 10 hours. On information and belief, Plaintiff and other aggrieved employees routinely were unable to take their second meal period as result of high demands of the job and the nature of the employer supervision, which required production to the detriment of compliance with California labor laws.

Further, Plaintiff's wage statements show when Plaintiff experienced a missed, short, or interrupted second meal period, Defendants failed to compensate Plaintiff a meal period premium. On information and belief, Defendants had a policy and practice of not paying meal period premiums for non-compliant second meal periods to all aggrieved employees, in violation of California law.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

Defendants required Plaintiff and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to law. Defendants had a policy and practice of not allowing Plaintiff and other aggrieved employees to use the restroom or take water breaks when they were on the floor. Furthermore, on information and belief, Defendants had a policy and practice of not paying rest period premiums to employees when they were due.

Illustrative examples of the failure to provide paid rest breaks is provided on Plaintiff's time records below:

Clock in date	Clock in time	Clock out date	Clock out time	Break start date	Break start time	Break end date	Break end time	Unpaid break	Paid break	Regular hours	Overtime	Double time	Total paid hours
1/26/2022	5:30:00 AM P	1/26/2022	2:30:00 PM	1/26/2022	9:30:00 AM F	1/26/2022	10:00:00 AM	0.5	0	8	0.5	0	8.5
1/27/2022	5:30:54 AM P	1/27/2022	2:34:15 PM	1/27/2022	9:00:00 AM F	1/27/2022	9:35:00 AM F	0.58	0	8	0.48	0	8.48
1/31/2022	5:34:43 AM P	1/31/2022	3:05:00 PM	1/31/2022	8:56:00 AM F	1/31/2022	9:31:00 AM F	0.58	0	8	0.93	0	8.93
2/1/2022	5:31:04 AM P	2/1/2022	3:33:59 PM	2/1/2022	9:11:57 AM F	2/1/2022	9:46:13 AM F	0.58	0	8	1.45	0	9.45
2/2/2022	5:30:22 AM P	2/2/2022	3:53:06 PM	2/2/2022	9:18:39 AM F	2/2/2022	9:53:31 AM F	0.58	0	8	1.8	0	9.8
2/3/2022	5:31:25 AM P	2/3/2022	3:40:17 PM	2/3/2022	8:55:23 AM F	2/3/2022	9:35:18 AM F	0.67	0	8	1.48	0	9.48
2/4/2022	5:29:50 AM P	2/4/2022	3:00:29 PM	2/4/2022	9:20:54 AM F	2/4/2022	9:55:12 AM F	0.58	0	8	0.93	0	8.93
2/7/2022	5:31:04 AM P	2/7/2022	2:23:21 PM	2/7/2022	8:48:31 AM F	2/7/2022	9:23:09 AM F	0.58	0	8	0.28	0	8.28
2/8/2022	5:30:02 AM P	2/8/2022	3:45:23 PM	2/8/2022	9:02:47 AM F	2/8/2022	9:37:16 AM F	0.58	0	8	1.67	0	9.67
2/9/2022	5:30:20 AM P	2/9/2022	2:13:06 PM	2/9/2022	9:11:15 AM F	2/9/2022	9:45:40 AM F	0.57	0	8	0.15	0	8.15
2/10/2022	5:30:43 AM P	2/10/2022	1:39:16 PM	2/10/2022	9:07:22 AM F	2/10/2022	9:41:37 AM F	0.57	0	7.58	0	0	7.58
2/11/2022	5:30:52 AM P	2/11/2022	2:01:57 PM	2/11/2022	9:07:58 AM F	2/11/2022	9:42:58 AM F	0.58	0	7.93	0	0	7.93
2/15/2022	5:00:00 AM P	2/15/2022	2:03:42 PM	2/15/2022	9:02:00 AM F	2/15/2022	9:36:00 AM F	0.57	0	8	0.48	0	8.48
2/16/2022	5:00:00 AM P	2/16/2022	2:26:12 PM	2/16/2022	9:18:00 AM F	2/16/2022	9:52:00 AM F	0.57	0	8	0.87	0	8.87
2/17/2022	5:00:00 AM P	2/17/2022	1:46:12 PM	2/17/2022	9:03:00 AM F	2/17/2022	9:37:00 AM F	0.57	0	8	0.2	0	8.2
2/18/2022	4:59:14 AM P	2/18/2022	1:40:43 PM	2/18/2022	9:10:41 AM F	2/18/2022	9:46:07 AM F	0.6	0	8	0.08	0	8.08
2/21/2022	4:59:21 AM P	2/21/2022	2:12:34 PM	2/21/2022	9:25:25 AM F	2/21/2022	10:00:09 AM	0.58	0	8	0.63	0	8.63
2/22/2022	4:59:18 AM P	2/22/2022	1:47:55 PM	2/22/2022	9:13:33 AM F	2/22/2022	9:48:05 AM F	0.58	0	8	0.22	0	8.22
2/24/2022	5:00:04 AM P	2/24/2022	1:50:27 PM	2/24/2022	9:00:36 AM F	2/24/2022	9:35:30 AM F	0.58	0	8	0.25	0	8.25

Extract from Plaintiff's Time Records from 1/26/2022 to 2/24/2022 Showing Plaintiff Did Not Take a Paid Rest Break

Defendants had a timekeeping system where employees would record the duration of their paid breaks. The extract above shows that for approximately a month Plaintiff did not take a single paid rest break. This violation is consistent throughout the duration of Plaintiff's employment and the PAGA period. Although Defendant is correct that rest periods need not be recorded under California law, Plaintiff and the aggrieved employees contend Defendant failed to authorize or permit ten minute rest breaks for each four hour (or major fraction) period worked.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

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

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

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

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

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

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

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

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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

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

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or

establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

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

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Unlawful Employment Condition **Violation of Labor Code § 432.5**

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

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

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

Provision 8 (Other Employment/Non-Solicitation) of Posh Bakery’s Confidentiality and Non-Disclosure Agreement contains a noncompete provision that violates California law with respect to the provisions that restrain Plaintiff and other aggrieved employees from engaging in any other lawful employment of their choosing during and after their employment with Defendant. This provision violates California law, subjects Defendant to Labor Code penalties. The provision should be immediately terminated by the Company.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

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

- LITIGATION HOLD NOTICE -

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

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

- CONCLUSION -

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

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

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Silvia Romero De Sanchez
Max Cha, The Post Bakery, Inc. Human Resources
Max@theposhbakery.com