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Superior Court of California,
County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

WILFRIDO FLORES AYALA, 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.

K & K TWO RESTAURANTS, INC.,
a California corporation; K & K
RESTAURANTS, INC., a California
corporation; K & K ONE
RESTAURANTS, INC., a California
corporation; K & K THREE
RESTAURANTS, INC., a California
corporation; K & K FOUR
RESTAURANTS, INC., a California
corporation; K & K FIVE
RESTAURANTS, INC., a California
corporation; C & K RESTAURANTS,
INC., a California corporation;
KABIR FIVE RESTAURANTS,
INC., a California corporation; PK
MANAGEMENT SERVICES, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 37-2023-00017122-CU-OE-CTL

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

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

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

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

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

THE PARTIES

6. Plaintiff Wilfrido Flores Ayala is a resident of Escondido, San Diego County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately August 2021 to November 2022. Plaintiff worked as a Dishwasher and a Cook for Defendants at their restaurant located in Escondido, California. Plaintiff typically worked nine (9) or more hours per day, and five (5) to six (6) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated \$18.00 per hour. Plaintiff's job duties included, without limitation, preparing and cooking food, cleaning and maintaining the kitchen area, and portioning and stocking supplies.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with an "Agreement to Arbitrate Claims" ("Arbitration Agreement") which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to employees for signature during the orientation process. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with other onboarding documents. Further, Defendants did not set forth in the agreement or otherwise provide employees with the rules which will govern the arbitration, instead forcing employees to seek this information out on their own ("Employee understands

1 that he or she may obtain a copy of the most current Rules by visiting JAMS' website, currently
2 located at <http://www.jamsadr.com/rules-employment-arbitration>, or by making a written
3 request to General Manager.”).

4 8. K & K TWO RESTAURANTS, INC. was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county, the State of California.

7 9. K & K RESTAURANTS, INC. was and is, upon information and belief, a
8 California corporation, and at all times hereinafter mentioned, an employer whose employees
9 are engaged throughout this county, the State of California.

10 10. K & K ONE RESTAURANTS, INC. was and is, upon information and belief, a
11 California corporation, and at all times hereinafter mentioned, an employer whose employees
12 are engaged throughout this county, the State of California.

13 11. K & K THREE RESTAURANTS, INC. was and is, upon information and belief,
14 a California corporation, and at all times hereinafter mentioned, an employer whose employees
15 are engaged throughout this county, the State of California.

16 12. K & K FOUR RESTAURANTS, INC. was and is, upon information and belief,
17 a California corporation, and at all times hereinafter mentioned, an employer whose employees
18 are engaged throughout this county, the State of California.

19 13. K & K FIVE RESTAURANTS, INC. was and is, upon information and belief, a
20 California corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county, the State of California.

22 14. C & K RESTAURANTS, INC. was and is, upon information and belief, a
23 California corporation, and at all times hereinafter mentioned, an employer whose employees
24 are engaged throughout this county, the State of California.

25 15. KABIR FIVE RESTAURANTS, INC. was and is, upon information and belief,
26 a California corporation, and at all times hereinafter mentioned, an employer whose employees
27 are engaged throughout this county, the State of California.

28 16. PK MANAGEMENT SERVICES, INC. was and is, upon information and belief,

1 a California corporation, and at all times hereinafter mentioned, an employer whose employees
2 are engaged throughout this county, the State of California.

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

7 18. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
8 were the partners, agents, owners, or managers of K & K TWO RESTAURANTS, INC.; K &
9 K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE
10 RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE
11 RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE RESTAURANTS,
12 INC.; and PK MANAGEMENT SERVICES, INC., at all relevant times.

13 19. Plaintiff is informed and believes, and thereon alleges, that each and all of the
14 acts and omissions alleged herein was performed by, or is attributable to, K & K TWO
15 RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.;
16 K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE
17 RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE RESTAURANTS,
18 INC.; PK MANAGEMENT SERVICES, INC.; and/or DOES 1 through 10 (collectively,
19 “Defendants” or “K & K RESTAURANTS”), each acting as the agent, employee, alter ego,
20 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
21 acting within the course and scope of such agency, employment, joint venture, or concerted
22 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
23 were in accordance with, and represent, the official policy of Defendants.

24 20. At all relevant times, Defendants, and each of them, ratified each and every act
25 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
26 and abetted the acts and omissions of each and all the other Defendants in proximately causing
27 the damages herein alleged.

28 21. Plaintiff is informed and believes, and thereon alleges, that each of said

Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

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

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

- (a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;
- (b) jointly exercised meaningful control over Plaintiff’s and other non-party Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;
- (c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared

1 the power to set the wages of Plaintiff and other non-party Aggrieved
2 Employees and determined their working conditions, and who jointly
3 reaped the benefits from the underpayment of their wages and
4 noncompliance with other statutory provisions governing their
5 employment.

6 24. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
7 there has existed a unity of interest and ownership between Defendants such that any
8 individuality and separateness between the entities has ceased.

9 25. Defendants K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS,
10 INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K
11 FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; C & K
12 RESTAURANTS, INC.; KABIR FIVE RESTAURANTS, INC.; PK MANAGEMENT
13 SERVICES, INC.; and/or DOES 1 through 10 are therefore alter egos of each other.

14 26. Adherence to the fiction of the separate existence of Defendants would permit an
15 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
16 liability for the wrongful acts committed by them under the name K & K RESTAURANTS.

17 27. Plaintiff further alleges, upon information and belief, that the Defendants K & K
18 TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS,
19 INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K
20 FIVE RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE
21 RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC. are alter egos of each
22 other for the following reasons:

23 (a) On the California Secretary of State's website
24 (<https://bizfileonline.sos.ca.gov/>), K & K TWO RESTAURANTS, INC.;
25 C & K RESTAURANTS, INC.; and KABIR FIVE RESTAURANTS,
26 INC. have the same principal office address, "27662 DEPUTY CIRCLE,
27 LAGUNA HILLS, CA 92653";

28 (b) On the California Secretary of State's website

(<https://bizfileonline.sos.ca.gov/>), K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K TWO RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC. have the same principal address and mailing address, “28562 OSO PARKWAY [SUITE#D-523 or SUITE D124], RSM, CA 92688”;

(c) According to their most recent “Statement of Information” forms filed with the California Secretary of State, K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC. share the same officers, managers, and/or members, including, but not limited to:

- i. Mohammad Kabir, who serves as Chief Executive Officer;
- ii. Poopak Maftoon, who serves as Chief Financial Officer;
- iii. Mohammad Kabir, who serves as Secretary for K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; C & K RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC.; and
- iv. Mohammad Kabir, who serves as Director for K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; C & K RESTAURANTS, INC.; and PK

MANAGEMENT SERVICES, INC.

- (d) According to the California Secretary of State's website, K & K TWO RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; and K & K FIVE RESTAURANTS, INC. share the same agent for service of process, Poopak Maftoon;
- (e) According to the California Secretary of State's website, K & K RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC. share the same agent for service of process, Mohammad Kabir; and
- (f) On information and belief, K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

28. Defendants own and operate a chain of Denny's franchise restaurants, with around nine (9) locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Rancho Santa Margarita or Laguna Hills, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

29. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon

1 information and belief, the usage of standardized documents and/or written policies, including
2 new-hire documents, indicate that Defendants dictated policies at the corporate level and
3 implemented them company-wide, regardless of their employees' assigned locations or
4 positions. Upon information and belief, Defendants set forth uniform policies and procedures
5 in several documents provided at an employee's time of hire.

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

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

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

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

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

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

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive at least minimum wages for compensation and that they were not receiving at least
3 minimum wages for work that was required to be done off-the-clock. In violation of the
4 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
5 least minimum wages for work done off-the-clock.

6 36. 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 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
9 payment of one (1) additional hour of pay at their regular rates of pay when they were not
10 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
11 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
12 additional hour of pay at their regular rates of pay when they did not receive a timely,
13 uninterrupted, thirty (30) minute meal period.

14 37. 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 rest
16 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 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
19 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
20 provided payment of one (1) additional hour of pay at their regular rates of pay when they were
21 not authorized and permitted to take a compliant rest period.

22 38. 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 complete and accurate wage statements in accordance with California law. In violation
25 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
26 provided complete and accurate wage statements.

27 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
2 and intentionally failed to do so.

3 40. 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 timely payment of wages during their employment. In violation of the California Labor Code,
6 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
7 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
8 premiums, within permissible time periods.

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

15 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 receive split shift premium pay when Defendants required Plaintiff and other non-party
18 Aggrieved Employees to return to work for an additional shift in the same day, after having
19 been clocked out for more than an hour. In violation of the California Labor Code and
20 applicable IWC Wage Order, Defendants did not pay Plaintiff and other non-party Aggrieved
21 Employees all split-shift premiums due.

22 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled to
24 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
25 duties and also have seats nearby to use during a lull in tasks that do require moving about or
26 standing. In violation of the California Labor Code and applicable IWC Wage Order,
27 Defendants failed to provide Plaintiff and/or other non-party Aggrieved Employees with
28 suitable seating.

1 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive reimbursement for all business-related expenses and costs they incurred during the
4 course and scope of their employment and that they did not receive reimbursement of applicable
5 business-related expenses and costs incurred.

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

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

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

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

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

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

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

9 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be accompanied
11 by a filing fee of seventy-five dollars (\$75).

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

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

24 (a) The aggrieved employee or representative shall give written notice by
25 online filing to the LWDA and by certified mail to the employer of the
26 specific provisions of the California Labor Code alleged to have been
27 violated (other than those listed in Section 2699.5), including the facts
28 and theories to support the alleged violation.

1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(c) and any employer response to that notice shall be accompanied
3 by a filing fee of seventy-five dollars (\$75).

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

12 52. On February 15, 2023, Plaintiff provided written notice by online filing to the
13 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
14 Code alleged to have been violated, including facts and theories to support the alleged
15 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
16 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
17 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
18 PAGA Case Number LWDA-CM-936422-23. A true and correct copy of Plaintiff's written
19 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

23 54. Thus, Plaintiff has satisfied the administrative prerequisites under California
24 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
25 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
26 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

27 55. Labor Code section 558(a) provides "[a]ny employer or other person acting on
28 behalf of an employer who violates, or causes to be violated, a section of this chapter or any

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

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

17 57. As set forth below, Defendants have violated numerous provisions of both the
18 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
19 Order.

20 58. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
21 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
22 attorney general, seeks assessment and collection of civil penalties for himself, all other non-
23 party Aggrieved Employees, and the State of California against Defendants for violations of
24 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
25 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

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1 **FIRST CAUSE OF ACTION**

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

3 **(Against all Defendants)**

4 59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 60. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
8 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
9 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
10 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
11 sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

12 61. Defendants’ conduct, as alleged herein, violates numerous sections of the
13 California Labor Code, including, but not limited to, the following:

- 14 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
15 Wage Order for Defendants’ failure to compensate Plaintiff and other
16 non-party Aggrieved Employees with all required overtime pay, as set
17 forth below;
- 18 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
19 applicable IWC Wage Order for Defendants’ failure to compensate
20 Plaintiff and other non-party Aggrieved Employees with at least
21 minimum wages for all hours worked, as set forth below;
- 22 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
23 applicable IWC Wage Order for Defendants’ failure to provide Plaintiff
24 and other non-party Aggrieved Employees with meal periods, as set forth
25 below;
- 26 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
27 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
28 and other non-party Aggrieved Employees to take rest periods, as set forth

below;

- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (g) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (h) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (i) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay split-shift premiums when Plaintiff and other non-party Aggrieved Employees returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as set forth below;
- (j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable seating to Plaintiff and/or other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

62. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable wage order. California Labor Code
2 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
3 be the . . . standard conditions of labor for employees. The employment of any employee . . .
4 under conditions of labor prohibited by the order is unlawful.”

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

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

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

19 66. California Labor Code section 510 codifies the right to overtime compensation
20 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
21 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
22 (7th) day of work, and to overtime compensation at twice the employee’s regular rate of pay for
23 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
24 the seventh (7th) day of work.

25 67. During the relevant time period, Defendants willfully failed to pay all overtime
26 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
27 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
28 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)

1 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
2 not recorded.

3 68. First, during the relevant period, Defendants had, and continue to have, a
4 company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved
5 Employees from recording hours worked that were outside of their scheduled shifts in order to
6 limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled
7 with Defendants' use of labor budgets, understaffing, and assignment of heavy workloads (*see*
8 *infra*), led Plaintiff and other non-party Aggrieved Employees to work off-the-clock after their
9 scheduled shifts. For example, about twice per week, after he clocked out from his shifts,
10 Plaintiff was required to stay up to 15 minutes each time to mop the floors and take out trash.
11 Thus, Defendants failed to track this time spent working after scheduled shifts, and Plaintiff and
12 other non-party Aggrieved Employees received no compensation for this time.

13 69. Second, during the relevant time period, Defendants had, and continue to have,
14 a company-wide policy of strictly staffing their restaurant locations based on the labor hours
15 allocated by each location's labor or payroll budget set by corporate. This practice of labor
16 budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads,
17 has resulted in chronic understaffing and a lack of adequate meal period coverage, because there
18 were too few employees on duty to handle the workload. Defendants also had a practice of
19 failing to schedule meal periods at all, which further caused Plaintiff and other non-party
20 Aggrieved Employees to not be relieved of their duties for compliant meal periods. As a result
21 of this lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were
22 not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
23 to receive a meal period. For example, Plaintiff and other non-party Aggrieved Employees were
24 required to work through meal periods due to the heavy workload and understaffing. However,
25 because Defendants frowned upon employees accruing meal period penalties, Defendants'
26 management would adjust employees' time records to reflect compliant meal periods or would
27 automatically deduct 30-minute meal periods from Plaintiff's and other non-party Aggrieved
28 Employees' time records even when meal periods were missed, short, and/or interrupted. On

1 information and belief, Defendants did not require employees to clock in and out for meal
2 periods. Thus, Defendants failed to record all hours worked during meal periods, and Plaintiff
3 and other non-party Aggrieved Employees performed work during meal periods for which they
4 were not paid.

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

13 71. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
14 the balance of overtime compensation as required by California law, violates the provisions of
15 California Labor Code sections 510 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 PAY MINIMUM WAGES**

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

20 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
21 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
22 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
23 Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which
24 an employee is subject to the control of an employer, and includes all the time the employee is
25 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, §
26 11050(2)(K) (defining "Hours Worked").

27 73. As stated, during the relevant time period, Defendants had a company-wide
28 practice and/or policy of utilizing labor budgets and limiting overtime accrual, leading to the

1 failure to compensate Plaintiff and other non-party Aggrieved Employees for their time spent
2 working off-the-clock after scheduled shifts, such as mopping the floors and taking out trash.
3 Further, as also stated above, due to Defendants' policies and/or practices of understaffing their
4 locations while assigning heavy workloads, and failing to schedule meal periods, Plaintiff and
5 other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods
6 to which they were entitled and were required to work off-the-clock during meal periods and/or
7 were otherwise not relieved of all duties during unpaid meal periods.

8 74. Also, as stated, in order to prevent employees from accruing meal period
9 penalties, upon information and belief, Defendants' management would adjust employees' time
10 records to reflect compliant meal periods or would automatically deduct 30-minute meal periods
11 from Plaintiff's and other non-party Aggrieved Employees' time records even when meal
12 periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay
13 Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal
14 periods because these hours were not always correctly recorded.

15 75. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
16 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
17 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
18 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
19 1197, and 1198.

20 76. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
21 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
22 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

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

8 79. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

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

17 81. During the relevant time period, as stated, Defendants had, and continue to have,
18 a company-wide policy and/or practice of understaffing their locations due to labor budgeting
19 and/or limited payroll allocation, which, combined with the assignment of heavy workloads and
20 failure to schedule meal periods entirely, resulted in a lack of meal period coverage and
21 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
22 uninterrupted meal periods to which they were entitled.

23 82. As a result, Plaintiff and other non-party Aggrieved Employees had to work
24 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
25 extended periods of time before taking meal periods. For example, Plaintiff missed his meal
26 periods entirely because often he was the only cook on duty, and there were no other cooks to
27 take over his job duties while he took his meal periods. Further, as stated, because Defendants
28 frowned upon employees accruing meal period penalties, Defendants' management adjusted

1 employee time records or would automatically deduct 30-minute meal periods from Plaintiff's
2 and other non-party Aggrieved Employees' time records, regardless of whether they had
3 received a compliant meal period or not, in order to strictly limit meal penalties that would need
4 to be paid by Defendants. Thus, Defendants systematically failed to correctly record meal
5 periods.

6 83. Additionally, Defendants did not provide Plaintiff and other non-party Aggrieved
7 Employees with second 30-minute meal periods on days that they worked in excess of 10 hours
8 in one day. For example, during the relevant time period, Plaintiff worked shifts in excess of
9 10 hours in one day at least twice per week and never took a second meal period during those
10 shifts. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
11 waivers on days that they were entitled to meal periods and were not relieved of all duties.

12 84. Moreover, Defendants had a company-wide policy of requiring all employees to
13 sign blanket meal period waivers. Defendants took the position that non-exempt, hourly paid
14 employees had waived their rights to first and/or second meal periods for the entirety of their
15 employment and, on that basis, did not provide them with all meal periods to which they were
16 entitled. Specifically, Defendants' meal period waiver form requires employees to provide
17 Defendants with written notice should they wish to revoke the waiver. Defendants' presumption
18 that meal periods would not be provided for shifts in excess of five (5) hours but less than six
19 (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket
20 meal period waivers signed at or near the time of hire, and imposition on employees to revoke
21 the waivers in writing, discouraged and impeded Plaintiff and other non-party Aggrieved
22 Employees from taking all meal periods to which they were entitled.

23 85. Furthermore, an employer's obligation to provide a meal period is only
24 "triggered" when the employer "employs an employee for a work period of more than five hours
25 per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to
26 work for a full five hours, its meal break obligation is triggered.").

27 [A]fter the meal break obligation is triggered . . . an employer is put to a
28 choice: it must (1) afford an off-duty meal period; (2) consent to a
mutually agreed-upon waiver if one hour or less will end the shift; or (3)

1 obtain written agreement to an on-duty meal period if circumstances
2 permit. Failure to do one of these will render the employer liable for
premium pay.

3 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
4 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers in
5 advance (as opposed to on a specific work day) renders them invalid and unenforceable, because
6 Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal
7 periods did not arise until they had employed them for a full five (5) hours.

8 86. Defendants knew or should have known that as a result of their company-wide
9 policies and/or practices, Plaintiff and other non-party Aggrieved Employees were not actually
10 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
11 should have known that they did not pay Plaintiff and other non-party Aggrieved Employees
12 meal period premiums when meal periods were missed, late, shortened, and/or interrupted.

13 87. Furthermore, Defendants engaged in a company-wide practice and/or policy of
14 not paying all meal period premiums owed when compliant meal periods are not provided.
15 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have
16 not received premium pay for missed, late, and interrupted meal periods.

17 88. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
18 Employees with compliant meal periods and failed to pay the full meal period premiums due.
19 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
20 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
21 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a),
22 (f), and (g).

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

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

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

28 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as
2 practicable shall be in the middle of each work period” and that the “rest period time shall be
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half
5 (3 ½) hours.

6 91. At all relevant times, California Labor Code section 226.7 provides that no
7 employer shall require an employee to work during any rest period mandated by an applicable
8 order of the California IWC. To comply with its obligation to authorize and permit rest periods
9 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
10 must “relinquish any control over how employees spend their break time, and relieve their
11 employees of all duties—including the obligation that an employee remain on call. A rest
12 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
13 257, 273 (2016).

14 92. Pursuant to the applicable IWC Wage Order and California Labor Code section
15 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
16 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
17 required rest period was not authorized and permitted.

18 93. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period
20 per each four (4) hour period worked or major fraction thereof. As with meal periods,
21 Defendants’ company-wide policies and/or practices of labor budgeting and/or limited payroll
22 allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period
23 coverage and prevented Plaintiff and other non-party Aggrieved Employees from being relieved
24 of all duty in order to take compliant rest periods. Defendants also failed to schedule rest
25 periods, which, coupled with Defendants’ failure to provide adequate rest period coverage,
26 further led to Plaintiff and other non-party Aggrieved Employees not being authorized and
27 permitted to take rest periods.

28 94. Moreover, Defendants maintained a company-wide on-premises rest period

1 policy, which mandated that Plaintiff and/or other non-party Aggrieved Employees remain on
2 Defendants' premises during their rest periods. Because Plaintiff and/or other non-party
3 Aggrieved Employees were restricted from leaving the premises during rest periods, they were
4 denied the ability to use their rest periods freely for their own purposes, such as running personal
5 errands. Thus, Defendants effectively maintained control over Plaintiff and/or other non-party
6 Aggrieved Employees during rest periods.

7 95. As a result of Defendants' practices and policies, Plaintiff and other non-party
8 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
9 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
10 entitled. For example, Plaintiff had to forego his rest periods entirely during each shift because
11 the restaurant was busy and did not have coverage.

12 96. Defendants have also engaged in a systematic, company-wide practice and/or
13 policy of not paying rest period premiums owed when rest periods are not authorized and
14 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
15 Employees have not received premium pay for all missed rest periods.

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

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

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

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

28 99. During the relevant time period, Defendants have knowingly and intentionally

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

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

18 101. Additionally, and separately from these violations, Defendants issued uniform
19 wage statements to Plaintiff and other non-party Aggrieved Employees that failed to list the
20 address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
21 section 226(a)(8) is to provide California employees with transparency as to the true identity of
22 their employer, to allow the employee to contact their employer during employment or in the
23 future for various reasons, including filing an administrative claim, judicial claim, or other
24 action to seek relief against their employer, to obtain unemployment benefits, etc. During the
25 relevant time period, Defendants systematically, and on a company-wide basis, issued wage
26 statements to Plaintiff and other non-party Aggrieved Employees that fail to list the employing
27 entity's correct address. Plaintiff's and other non-party Aggrieved Employees' wage statements
28 incorrectly list the employer's address as "510 WEST MISSION AVENUE, ESCONDIDO, CA

1 92025,” but according to the California Secretary of State’s website, K & K TWO
2 RESTAURANTS, INC.’s entity address should be “28562 OSO PKWY. RSM [RANCHO
3 SANTA MARGARITA], CA 92688.”

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

12 103. California Labor Code section 1174(d) provides that “[e]very person employing
13 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
14 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
15 plants or establishments at which employees are employed, payroll records showing the hours
16 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
17 applicable piece rate paid to, employees employed at the respective plants or
18 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
19 civil penalty if they fail to maintain accurate and complete records as required by section
20 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
21 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
22 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
23 result of failing to record the off-the-clock hours that they worked.

24 104. California Labor Code section 1198 provides that the maximum hours of work
25 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
26 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
27 of any employees for longer hours than those fixed by the order or under conditions of labor
28 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers

are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff's and other non-party Aggrieved Employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT
VIOLATION OF LABOR CODE SECTION 204

106. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

107. At all relevant times herein, 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, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the

1 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
2 than seven (7) calendar days following the close of the payroll period.

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

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

9 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

23 112. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
24 who are no longer employed by Defendants their wages earned and unpaid at the time of
25 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
26 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
27 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
28 (g).

1 **FAILURE TO PAY SPLIT-SHIFT PAY**

2 **VIOLATION OF LABOR CODE SECTION 1198**

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

8 114. California Code of Regulations, Title 8, section 11050(4)(C) provides that,
9 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
10 in addition to the minimum wage for that workday, except when the employee resides at the
11 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work
12 schedule, which is interrupted by non-paid non-working periods established by the employer,
13 other than bona fide rest or meal periods.”

14 115. Defendants willfully violated California Labor Code section 1198 and California
15 Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff
16 and other non-party Aggrieved Employees a split-shift premium when they returned to work for
17 an additional shift in the same day, after having been clocked out for more than an hour. For
18 example, a few times throughout his employment, Plaintiff was required to work an earlier shift,
19 and then told to clock out for more than an hour, before returning to work in in the afternoon
20 for his usual shift. When this occurred, Defendants did not pay Plaintiff and other non-party
21 Aggrieved Employees an additional hour at minimum wage.

22 116. Defendants’ failure to provide Plaintiff and other non-party Aggrieved
23 Employees with split-shift pay when they returned to work for an additional shift in the same
24 day, after having been clocked out for more than an hour, violates California Labor Code section
25 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Plaintiff and other non-
26 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
27 Code sections 2699(a), (f), and (g).

28 //

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(14)(A)

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

118. California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

119. Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other non-party Aggrieved Employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could provide other non-party Aggrieved Employees with a seat or stool at their host stands, but instead deny employees seating and force other non-party Aggrieved Employees to stand throughout the day.

120. Other non-party Aggrieved Employees spent a portion of their day behind or at these host stands. The nature of the work of an employee performing host duties can reasonably be accomplished from a seated position. However, Defendants systematically, and on a company-wide basis, do not provide seats or stools at or near the host stands, forcing other non-party Aggrieved Employees to stand throughout their work shifts.

121. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other non-party Aggrieved Employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. Defendants’ management did not inform other non-party Aggrieved Employees that they were allowed to sit down, provide any means for them to

1 sit down, or mention any policy regarding sitting.

2 122. As a result of Defendants' company-wide policy and/or practice of prohibiting
3 employees from sitting during their shifts and company-wide failure to provide suitable seating,
4 other non-party Aggrieved Employees were forced to stand during shifts and denied seats.
5 Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
6 violated and continues to violate California Labor Code section 1198 and IWC Wage Order No.
7 5-2001, subdivision 14(A).

8 123. Other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

10 **FAILURE TO PROVIDE SUITABLE SEATING**
11 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
12 **REGULATIONS, TITLE 8, SECTION 11050(14)(B)**

13 124. At all relevant times herein, California Labor Code section 1198 makes it illegal
14 to employ an employee under conditions of labor that are prohibited by the applicable IWC
15 Wage Order. California Labor Code section 1198 requires that ". . . the standard conditions of
16 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
17 employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

18 125. California Code of Regulations, Title 8, section 11050 subdivision 14(B)
19 provides that "[w]hen employees are not engaged in the active duties of their employment and
20 the nature of the work requires standing, an adequate number of suitable seats shall be placed
21 in reasonable proximity to the work area and employees shall be permitted to use such seats
22 when it does not interfere with the performance of their duties."

23 126. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
25 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls in
26 their work duties, nor were they provided with suitable seats in reasonable proximity to their
27 work areas.

28 127. Defendants' California restaurants are generally similar in their layout and

1 design and there was, and continues to be, space near their work areas (with reasonable or no
2 modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff
3 and other non-party Aggrieved Employees during lulls in operation. Defendants could have
4 provided Plaintiff and other non-party Aggrieved Employees with a seat or stool in their work
5 areas, but instead denied Plaintiff and other non-party Aggrieved Employees suitable seating
6 altogether and effectively forced Plaintiff and other non-party Aggrieved Employees to stand
7 throughout the day.

8 128. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
9 with seats or stools in reasonable proximity to their work areas to allow them to use seats when
10 it would not interfere with the performance of their duties for times when they were not engaged
11 in active duties that require standing. In other words, to the extent Plaintiff and other non-party
12 Aggrieved Employees engaged in duties in which the nature of the work required standing,
13 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,
14 Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to
15 a seat or stool under California law.

16 129. As a result of Defendants' company-wide policy and/or practice of prohibiting
17 employees from sitting at any time, even when they were not engaged in active duties requiring
18 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
19 Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts and
20 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party
21 Aggrieved Employees violated and continues to violate California Labor Code section 1198 and
22 IWC Wage Order No. 5-2001, subdivision 14(B).

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

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **VIOLATION OF LABOR CODE SECTION 2802**

27 131. At all times herein set forth, California Labor Code section 2802 provides that
28 an employer must reimburse employees for all necessary expenditures and losses incurred by

1 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
2 to prevent employers from passing off their cost of doing business and operating expenses on
3 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
4 (2014). The applicable wage order, IWC Wage Order No. 5-2001 provides that: “[w]hen
5 uniforms are required by the employer to be worn by the employee as a condition of
6 employment, such uniforms shall be provided and maintained by the employer.” IWC Wage
7 Order No. 5-2001 further provides that: “[w]hen uniforms are required by the employer to be
8 worn by the employee as a condition of employment, such uniforms shall be provided and
9 maintained by the employer.”

10 132. First, during the relevant time period, Defendants required Plaintiff and other
11 non-party Aggrieved Employees to purchase supplies and equipment necessary for the
12 performance of their duties, but failed to reimburse them for their out-of-pocket costs. For
13 example, Plaintiff spent about \$90 throughout his employment on stainless steel scrubbing pads
14 in order to clean the dishes, because Defendants failed to provide him with the necessary
15 supplies which were required for the restaurant to operate properly and/or meet management’s
16 expectations. Although Defendants required Plaintiff and other non-party Aggrieved
17 Employees to purchase supplies and equipment to carry out their work-related responsibilities,
18 Defendants failed to reimburse them for their out-of-pocket costs.

19 133. Second, during the relevant time period, Defendants, on a company-wide basis,
20 expected Plaintiff and other non-party Aggrieved Employees to wear uniforms bearing the
21 Denny’s logo, including shirts. However, Defendants did not provide their employees with a
22 sufficient number of uniforms to wear for their shifts throughout the week. For example, as
23 stated, Defendants only provided Plaintiff and other non-party Aggrieved Employees with three
24 (3) to four (4) uniform shirts at the time of hire. Because Defendants failed to provide Plaintiff
25 and other non-party Aggrieved Employees with an adequate number of uniforms in relation to
26 their scheduled shifts and for the tasks they were required to perform, Plaintiff was forced to
27 wash his uniforms more frequently than he would otherwise do laundry, and incurred expenses
28 in doing so. Thus, Defendants failed to maintain the uniforms they required Plaintiff and other

1 non-party Aggrieved Employees to wear during their shifts and forced them to incur the cost of
2 maintaining employee uniforms.

3 134. Defendants could have provided Plaintiff and other non-party Aggrieved
4 Employees with the actual tools for use on the job, such as supplies and equipment, as well as
5 an adequate number of uniform items and access to laundering services. Or, Defendants could
6 have reimbursed employees for the costs of their supplies and equipment, and laundering
7 expenses or provided a uniform maintenance allowance. Instead, Defendants passed these
8 operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant
9 times, Plaintiff did not earn at least two (2) times the minimum wage.

10 135. Defendants' company-wide policy and/or practice of not reimbursing employees
11 for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-
12 party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and other
13 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
14 Labor Code sections 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
16 **EMPLOYMENT**

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

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

28 137. At all relevant times, on information and belief, Defendants failed, on a

1 company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved
2 Employees that lists all the requisite information set forth in Labor Code section
3 2810.5(a)(1)(A)-(C).

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

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

14 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
15 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

17 2. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
19 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
20 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
21 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
22 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
23 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
24 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
25 1198 and the applicable IWC Wage Order (by failing to provide split-shift pay); 1198 and the
26 applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to
27 reimburse business expenses); and 2810.5 (by failing to provide written notice of information
28 material to employment);

1 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
2 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
3 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

4 4. For attorneys' fees and costs pursuant to California Labor Code section
5 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
6 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
7 1197, 1198, 2802, and 2810.5;

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

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

11
12 Dated: April 24, 2023

Respectfully submitted,

Capstone Law APC

13
14
15 By: _____



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Attorneys for Plaintiff Wilfrido Flores Ayala

EXHIBIT “1”



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February 14, 2023

VIA ONLINE SUBMISSION

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

Subject: *Wilfrido Flores Ayala v. K & K Two Restaurants, Inc., et al.*

Dear PAGA Administrator:

This office represents Wilfrido Flores Ayala in connection with his claims under the California Labor Code. Mr. Flores Ayala was an employee of K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; KABIR FIVE RESTAURANTS, INC.; PK MANAGEMENT SERVICES, INC.; and/or C & K RESTAURANTS, INC. For the purpose of this letter, Mr. Flores Ayala collectively refers to these entities as "K & K."

The employers may be contacted directly at the addresses below:

K & K TWO RESTAURANTS, INC.
28562 OSO PKWY.
RSM, CA 92688

K & K RESTAURANTS, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688

K & K ONE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RSM, CA 92688

K & K THREE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RANCHO SANTA MARGARITA, CA 92688

K & K FOUR RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RSM, CA 92688

K & K FIVE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RSM, CA 92688

C & K RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653

KABIR FIVE RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653

PK MANAGEMENT SERVICES, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688

Mr. Flores Ayala intends to seek civil penalties, attorney's fees, costs, and other available relief for

violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Flores Ayala seeks relief on behalf of himself, the State of California, and other persons who are or were employed by K & K 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.

K & K employed Mr. Flores Ayala as an hourly paid, non-exempt employee from approximately August 2021 to November 2022. Mr. Flores Ayala worked for K & K as a Dishwasher and Cook at its Denny’s restaurant location in Escondido, California. During his employment, Mr. Flores Ayala typically worked nine (9) or more hours per day, five (5) to six (6) days per week. Mr. Flores Ayala typically worked from 3:00 p.m. to 11:00 p.m. or later. Mr. Flores Ayala was compensated approximately \$18 per hour at the time his employment ended with K & K. Mr. Flores Ayala’s job duties included, without limitation, preparing and cooking food, cleaning and maintaining the kitchen area, and portioning and stocking supplies.

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

K & K’s Company-Wide and Uniform Payroll and HR Practices

K & K TWO RESTAURANTS, INC.; K & K RESTAURANTS, INC.; K & K ONE RESTAURANTS, INC.; K & K THREE RESTAURANTS, INC.; K & K FOUR RESTAURANTS, INC.; K & K FIVE RESTAURANTS, INC.; C & K RESTAURANTS, INC.; KABIR FIVE RESTAURANTS, INC.; and PK MANAGEMENT SERVICES, INC. are California corporations. Together, they operate nine (9) Denny’s restaurant franchise locations throughout Southern California. Upon information and belief, K & K maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Rancho Santa Margarita or Laguna Hills, California, for all non-exempt, hourly paid employees working for K & K in California, including Mr. Flores Ayala and other aggrieved employees. At all relevant times, K & K issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Flores Ayala and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

First, during the relevant period, K & K had, and continues to have, a company-wide policy of discouraging and impeding Mr. Flores Ayala and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with K & K’s use of labor budgets, understaffing, and assignment of heavy workloads (*see infra*), led Mr. Flores Ayala and other aggrieved employees to work off-the-clock after their scheduled shifts. For example, about twice per week, after he clocked out from his shifts, Mr. Flores Ayala was required to stay up to 15 minutes each time to mop the floors and take out trash. Thus, K & K failed to track this time spent working after scheduled shifts, and Mr. Flores Ayala and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, K & K had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours which, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. K & K also had a practice of failing to schedule meal periods at all, which further caused Mr. Flores Ayala and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Flores Ayala and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Flores Ayala and other aggrieved employees were required to work through meal periods due to the heavy workload and understaffing. However, because K & K frowned upon employees accruing meal period penalties, K & K’s management would adjust employees’ time records to reflect compliant meal periods or would automatically deduct 30-minute meal periods from Mr. Flores Ayala’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. On information and belief, K & K did not require employees to clock in and out for meal periods. Thus, K & K failed to record all hours worked during meal periods, and Mr. Flores Ayala and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

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

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

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

As stated, during the relevant time period, K & K had a company-wide practice and/or policy of utilizing labor budgets and limiting overtime accrual, leading to the failure to compensate Mr. Flores Ayala and other aggrieved employees for their time spent working off-the-clock after scheduled shifts, such as mopping the floors and taking out trash. Further, as also stated above, due to K & K's policies and/or practices of understaffing its locations while assigning heavy workloads, and failing to schedule meal periods, Mr. Flores Ayala and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods and/or were otherwise not relieved of all duties during unpaid meal periods.

Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, K & K's management would adjust employees' time records to reflect compliant meal periods or would automatically deduct 30-minute meal periods from Mr. Flores Ayala's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, K & K systematically failed to pay Mr. Flores Ayala and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, K & K did not pay at least minimum wages for all hours worked by Mr. Flores Ayala and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, K & K 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, K & K regularly failed to pay at least minimum wages to Mr. Flores Ayala and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Flores Ayala 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 stated, K & K had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to schedule meal periods entirely, resulted in a lack of meal period coverage and prevented Mr. Flores Ayala and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled.

As a result, Mr. Flores Ayala 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, Mr. Flores Ayala missed his meal periods entirely because often he was the only cook on duty, and there were no other cooks to take over his job duties while he took his meal periods. Further, because K & K frowned upon employees accruing meal period penalties, K & K's management adjusted employee time records or would automatically deduct 30-minute meal periods from Mr. Flores Ayala's and other aggrieved employees' time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by K & K. Thus, K & K systematically failed to correctly record meal periods.

Additionally, K & K did not provide Mr. Flores Ayala and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Flores Ayala worked shifts in excess of 10 hours in one day at least twice per week and never took a second meal period. Mr. Flores Ayala 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.

Moreover, K & K had a company-wide policy of requiring all employees to sign blanket meal period waivers. K & K took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Specifically, K & K's meal period waiver form requires employees to provide K & K with written notice should they wish to revoke the waiver. K & K's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire discouraged and impeded Mr. Flores Ayala and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That K & K required Mr. Flores Ayala and other aggrieved employees to sign meal period waivers in advance (as opposed to on a specific work day) renders them invalid and unenforceable, because K & K's obligation to provide Mr. Flores Ayala and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

K & K knew or should have known that as a result of its company-wide policies and/or practices, Mr. Flores Ayala and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. K & K further knew or should have known that it did not pay Mr. Flores Ayala and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted.

Furthermore, K & K engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Flores Ayala and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that K & K did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, K & K did not pay other aggrieved employees at the correct rate of pay for premiums because K & K 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, K & K failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Flores Ayala and other aggrieved employees are entitled to 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, K & K regularly failed to authorize and permit Mr. Flores Ayala 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, K & K’s company-wide policies and/or practices of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Flores Ayala and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. K & K also failed to schedule rest periods, which, coupled with K & K’s failure to provide adequate rest period coverage, further led to Mr. Flores Ayala and other aggrieved employees not being authorized and permitted to take rest periods.

Moreover, K & K maintained a company-wide on-premises rest period policy, which mandated that Mr. Flores Ayala and/or other aggrieved employees remain on K & K’s premises during their rest periods. Because Mr. Flores Ayala and/or 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, K & K effectively maintained control over Mr. Flores Ayala and/or other aggrieved employees during rest periods.

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

K & K also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Flores Ayala and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that K & K did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, K & K did not pay other aggrieved employees at the correct rate of pay for premiums because K & K 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, K & K failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Flores Ayala and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. K & K has not provided Mr. Flores Ayala 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, K & K has knowingly and intentionally provided Mr. Flores Ayala and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, K & K issued uniform wage statements to Mr. Flores Ayala and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; 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, K & K violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because K & K did not record the time Mr. Flores Ayala 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), K & K did not list the correct amount of gross wages and net wages earned by Mr. Flores Ayala and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, K & K failed to accurately list the total number of hours worked by Mr. Flores Ayala 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).

Second, because K & K did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, K & K did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). K & K 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).

Third, and separately from these violations, K & K issued uniform wage statements to Mr. Flores Ayala and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, K & K systematically, and on a company-wide basis, issued wage statements to Mr. Flores Ayala and other aggrieved employees that fail to list the employing entity's correct address. Mr. Flores Ayala's and other aggrieved employees' wage statements incorrectly list the employer's address as "510 WEST MISSION AVENUE, ESCONDIDO, CA 92025," but according to the California Secretary of State's website, K & K TWO RESTAURANTS, INC.'s entity address should be "28562 OSO PKWY. RSM [RANCHO SANTA MARGARITA], CA 92688."

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 of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

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

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

Mr. Flores Ayala 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, K & K failed to pay Mr. Flores Ayala and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums within any time period specified by California Labor Code section 204.

Mr. Flores Ayala 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.

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

Mr. Flores Ayala 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 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides 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(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

K & K willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because K & K failed to pay Mr. Flores Ayala and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, a few times throughout his employment, Mr. Flores Ayala was required to work an earlier shift, and then told to clock out for more than an hour, before returning to work in the afternoon for his usual shift. When this occurred, K & K did not pay Mr. Flores Ayala and other aggrieved employees an additional hour at minimum wage.

K & K's failure to provide Mr. Flores Ayala and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than

an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Mr. Flores Ayala 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

K & K’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. K & K could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, K & K systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

K & K violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. K & K’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of K & K’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. K & K’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring K & K into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050 subdivision (14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

K & K's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Flores Ayala and other aggrieved employees during lulls in operation. K & K could have provided Mr. Flores Ayala and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

K & K did not provide Mr. Flores Ayala and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Flores Ayala and other aggrieved employees engaged in duties in which the nature of the work required standing, K & K denied them the use of seats nearby during lulls in their work duties. Moreover, K & K did not inform Mr. Flores Ayala and other aggrieved employees of their rights to a seat or stool under California law.

As a result of K & K's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Flores Ayala and other aggrieved employees were forced to stand during shifts and denied seats. K & K's failure to provide suitable seating to Mr. Flores Ayala and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Flores Ayala and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring K & K into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, K & K required Mr. Flores Ayala and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Flores Ayala spent about \$90 throughout his employment on stainless steel scrubbing pads in order to clean the dishes, because K & K failed to provide him with the necessary supplies which were required for the restaurant to operate properly and/or meet management's expectations. Although K & K required Mr. Flores Ayala and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, K & K failed to reimburse them for their out-of-pocket costs.

Second, during the relevant time period, K & K, on a company-wide basis, expected Mr. Flores Ayala and other aggrieved employees to wear uniforms bearing the Denny's logo, including shirts. However, K & K did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, as stated, K & K only provided Mr. Flores Ayala and other aggrieved employees with three (3) to four (4) uniform shirts at the time of hire. Because K & K failed to provide Mr. Flores Ayala and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Flores Ayala was forced to wash his uniforms more frequently than he would otherwise do laundry, and incurred expenses in doing so. Thus, K & K failed to maintain the uniforms it required Mr. Flores Ayala and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

K & K could have provided Mr. Flores Ayala and other aggrieved employees with the actual tools for use on the job, such as supplies and equipment, as well as an adequate number of uniform items and access to laundering services. Or, K & K could have reimbursed employees for the costs of their supplies and equipment, and laundering expenses or provided a uniform maintenance allowance. Instead, K & K passed these operating costs off onto Mr. Flores Ayala and other aggrieved employees. At all relevant times, Mr. Flores Ayala did not earn at least two (2) times the minimum wage.

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

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

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

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

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

California Labor Code § 558(a)

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

Accordingly, Mr. Flores Ayala 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 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Flores Ayala, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against K & K for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. K & K shall pay Mr. Flores Ayala and all other aggrieved employees employed by K & K at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. K & K shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. K & K shall conduct a survey or interview all current and former aggrieved employees in California who worked for K & K in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for supply and equipment expenses, uniform maintenance costs, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. K & K shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. K & K also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. K & K shall pay Mr. Flores Ayala and each other aggrieved employee with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, as required by California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C).
6. K & K shall implement and provide suitable seating to all aggrieved employees.
7. K & K shall reimburse Mr. Flores Ayala and all aggrieved employees who were required to pay for any business expenses incurred for K & K's benefit, including, but not limited to, costs of supply and equipment expenses and uniform maintenance costs, as required by Labor Code section 2802.
8. K & K shall pay accrued legal interest to Mr. Flores Ayala and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
9. K & K shall provide Mr. Flores Ayala and all aggrieved employees employed by K & K at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

10. K & K shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. K & K shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. K & K shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,



Ninel Kocharyan

Copy: K & K TWO RESTAURANTS, INC. (via U.S. Certified Mail); K & K RESTAURANTS, INC. (via U.S. Certified Mail); K & K ONE RESTAURANTS, INC. (via U.S. Certified Mail); K & K THREE RESTAURANTS, INC. (via U.S. Certified Mail); K & K FOUR RESTAURANTS, INC. (via U.S. Certified Mail); K & K FIVE RESTAURANTS, INC. (via U.S. Certified Mail); C & K RESTAURANTS, INC. (via U.S. Certified Mail); KABIR FIVE RESTAURANTS, INC. (via U.S. Certified Mail); PK MANAGEMENT SERVICES, INC. (via U.S. Certified Mail)

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



7022 2410 0000 2406 4727

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Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$

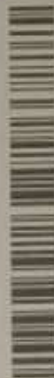
K & K TWO RESTAURANTS, INC.
28562 OSO PKWY.
RSM, CA 92688

K & K TWO RESTAURANTS, INC.
28562 OSO PKWY.
RSM, CA 92688

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

K & K TWO RESTAURANTS, INC.
28562 OSO PKWY.
RSM, CA 92688



9590 9402 7690 2122 7170 06

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4727

Registered Delivery

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express[®]
- ☐ Registered Mail[™]
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation[™]
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2406 4710

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Certified Mail Fee

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

☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Restricted Mail (Signature Confirmation) \$

DUPLICATE
VI
K. B. K.
Postmark

K & K RESTAURANTS, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688

K & K RESTAURANTS, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse
- See that the return address has been placed on the front

K & K RESTAURANTS, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688



9590 9402 7690 2122 7169 93

7022 2410 0000 2406 4710

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee

☒ 3. Received by (Printed Name) C. Date of Delivery

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

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail[®]

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ First-class Delivery Restricted Delivery

☐ Priority Mail Express[®]

☐ Registered Mail[™]

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation[™]

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



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OFFICIAL USE

Certified Mail Fee

Floris Ayala

Signature & Date (must be in ink)

Return Receipt (hardcopy)

Return Receipt (electronic)

Postmark

K & K ONE RESTAURANTS, INC.
28562 OSO PKWY, SUITE#D-523
RSM, CA 92688

K & K ONE RESTAURANTS, INC.
28562 OSO PKWY, SUITE#D-523
RSM, CA 92688

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

K & K ONE RESTAURANTS, INC.
28562 OSO PKWY, SUITE#D-523
RSM, CA 92688



9590 9402 7690 2122 7169 86

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4703

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Domestic Return Receipt

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



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Certified Mail Fee

Extra Services & Fees (mark box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Restricted Mail (signature required) \$
Postmark

FLORES AYALA

✓
K 3 K

K & K THREE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RANCHO SANTA MARGARITA, CA 92688

K & K THREE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RANCHO SANTA MARGARITA, CA 92688

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.

K & K THREE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RANCHO SANTA MARGARITA, CA 92688



9590 9402 7690 2122 7169 79

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4697

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
- B. Received by (Printed Name) ☐ Addressee
- C. Date of Delivery
- 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
 - ☒ Certified Mail[®]
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Insured Mail[®]
 - ☐ Insured Mail Restricted Delivery
 - ☐ Priority Mail Express[®]
 - ☐ Registered Mail[™]
 - ☐ Registered Mail Restricted Delivery
 - ☐ Signature Confirmation[™]
 - ☐ Signature Confirmation Restricted Delivery

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



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Certified Mail Fee

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

☐ Return Receipt (hardcopy)

☐ Return Receipt (electronic)

Postmark

K & K FOUR RESTAURANTS, INC.
28562 OSO PKWY, SUITE#D-523
RSM, CA 92688

K & K FOUR RESTAURANTS, INC.
28562 OSO PKWY, SUITE#D-523
RSM, CA 92688

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

PSN that use meter numbers that need be used.

K & K FOUR RESTAURANTS, INC.
28562 OSO PKWY, SUITE#D-523
RSM, CA 92688



9590 9402 7690 2122 7169 62

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4680

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

C. Date of Delivery

☐ Yes

☐ No

D. Is delivery address different from item 1? If YES, enter delivery address below:

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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Los Angeles, CA. 90067



7022 2410 0000 2406 4673

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Signature: Flora Ayan
Certified Mail Fee: \$ 3.80
Additional Services & Fees (check box, and fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$ 0.00
Postmark: Kyle

K & K FIVE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RSM, CA 92688

7022 2410 0000 0142 2202

K & K FIVE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RSM, CA 92688

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.

K & K FIVE RESTAURANTS, INC.
28562 OSO PKWY. SUITE#D-523
RSM, CA 92688



9590 9402 7690 2122 7169 55

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4673

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature X Agent ☐
B. Received by (Printed Name) ☐ Addressee ☐
C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

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

Domestic Return Receipt

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Los Angeles, CA. 90067



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Certified Mail Fee

Return Receipt (hardcopy) ☐
Return Receipt (electronic) ☐
Postmark

FL0000 A 1/1/11

(K) \$ 1.2

Postmark

C & K RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653

C & K RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

C & K RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653



9580 9402 7690 2122 7169 48

7022 2410 0000 2406 4666

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

COMPLETE THIS SECTION ON DELIVERY

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

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

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

Domestic Return Receipt

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CERTIFIED MAIL



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Certified Mail Fee \$10.05
 Extra Services & Fees (check one, add fee as appropriate)
☒ Return Receipt (hardcopy) \$3.50
☐ Return Receipt (electronic) \$0.00
 Postmark K 8/14

KABIR FIVE RESTAURANTS, INC.
 27662 DEPUTY CIRCLE
 LAGUNA HILLS, CA 92653

2022 2410 0000 0742 2202

KABIR FIVE RESTAURANTS, INC.
 27662 DEPUTY CIRCLE
 LAGUNA HILLS, CA 92653

SENDER: COMPLETE THIS SECTION

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

KABIR FIVE RESTAURANTS, INC.
 27662 DEPUTY CIRCLE
 LAGUNA HILLS, CA 92653

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery
☐ Registered Mail
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

4. Service Type
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Article Number (Transfer from service label)
 9590 9402 7690 2122 7169 24

7022 2410 0000 2406 4642

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

Domestic Return Receipt

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

CERTIFIED MAIL®



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Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$

Phone's signature

K3h
Postmark

PK MANAGEMENT SERVICES, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688

PK MANAGEMENT SERVICES, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688

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.

PK MANAGEMENT SERVICES, INC.
28562 OSO PKWY SUITE D124
RSM, CA 92688



9590 9402 7690 2122 7169 31

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4659

PS Form 3811, July 2020 PSN 7530-02-000-9063

COMPLETE THIS SECTION ON DELIVERY

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

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

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse

C & K RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653



9590 9402 7690 2122 7169 48

(Transfer from service label)

7022 2410 0000 2406 4666

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X C-19 R+65

☒ Agent
☐ Addressee

3. Received by (Printed Name)

P. Maftoon

C. Date of Delivery

2/16/2023

D. Is delivery address different from item 1?

If YES, enter delivery address below: ☐ Yes ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Registered Mail
Registered Mail Restricted Delivery (\$500)

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

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.

KABIR FIVE RESTAURANTS, INC.
27662 DEPUTY CIRCLE
LAGUNA HILLS, CA 92653



9590 9402 7690 2122 7169 24

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4642

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X C-19 R+65

☒ Agent
☐ Addressee

B. Received by (Printed Name)

P. Maftoon

C. Date of Delivery

2/16/2023

D. Is delivery address different from item 1?

If YES, enter delivery address below: ☐ Yes ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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Domestic Return Receipt