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Electronically Filed
4/25/2023 10:56 AM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Donna Benz, Deputy
\$1435 PAID
\$150 JURY FEES PAID

Attorneys for MICHAEL TAVAREZ, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

CV-23-002242

MICHAEL TAVAREZ, on behalf of
himself and all others similarly situated, and
on behalf of the general public,

Plaintiff,

v.

MADDOX RESOURCES, INC.; and DOES
1-100,

Defendants.

Case No.

**PLAINTIFF MICHAEL TAVAREZ'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Maintain Lawful Tip Pooling Policy (Cal. Lab. Code § 2698, et. seq.)
9. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

Freeland, John D

This case has been assigned to Judge _____
Dept. 23
Department _____, for all purposes including Trial.

1 Plaintiff MICHAEL TAVAREZ (hereinafter “Plaintiff”), on behalf himself and all other similarly
2 aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendant
3 MADDOX RESOURCES, INC. (hereinafter “Defendant”) and/or DOES 1-100.

4 **I. INTRODUCTION**

- 5 1. This is a representative action seeking recovery of penalties under the California Labor Code
6 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
7 Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a
8 lawsuit on behalf of himself and other current and former employees to address an employer’s
9 violations of the *California Labor Code*.
- 10 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
11 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
12 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
13 break; worked qualifying shifts without receiving second meal periods and second and third
14 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
15 owed twice per month; were not paid compensation for all time worked at the straight,
16 overtime, or double time rate; were not paid waiting time penalties; and were not reimbursed
17 for business expenses.. Plaintiff seeks penalties on behalf of himself and all other aggrieved
18 employees of Defendant and/or DOES as provided herein. This Complaint also seeks
19 attorneys’ fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).
- 20 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
21 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
22 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
23 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
24 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
25 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
26 paid compensation for all time worked at the regular, overtime or double time rate; paid all
27 wages owed twice per month; paid penalties for not being paid timely at the time of
28 termination; and reimbursed for business expenses.

4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, overtime, double time, rest periods, wage statements, paying compensation at time of termination, timing of payment, and business expense reimbursement. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

5. Plaintiff MICHAEL TAVAREZ is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).

6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits *California Labor Code* violations within Stanislaus County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The brand unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Stanislaus County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Stanislaus County.

7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation

shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Stanislaus, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff MICHAEL TAVAREZ, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, compensation for all time worked at the regular, overtime, and doubletime rate, to be paid timely pursuant to California law, to receive timely wages at the time of termination, and to be reimbursed for business expenses from Defendant and/or DOES.

11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as delivery drivers, cashiers, servers, hosts, bussers, cooks, kitchen workers, team members, or similar job designations and titles, as non-exempt, hourly employees during the relevant time period. Plaintiff was employed in a non-exempt capacity.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on February 17, 2023. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA

and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendants

13. Defendant and/or DOES operate throughout the State of California and employ non-exempt, hourly employees to run pizza restaurants and/or stores to serve their clients and customers in the State of California.

14. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

15. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

16. California is the nerve center of Defendant’s and/or DOES’ operations.

17. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

18. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of Defendant and/or DOES at all times.

IV. GENERAL ALLEGATIONS

20. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims

1 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
2 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
3 composed of all hourly non-exempt delivery drivers, cashiers, servers, hosts, bussers, cooks,
4 kitchen workers, team members, or similar job designations and titles, and all other current and
5 former similarly situated non-exempt, hourly employees of Defendant and/or DOES in the
6 State of California.

7 21. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
8 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
9 periods in a timely manner or payment of one hour of pay as additional compensation at
10 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
11 uninterrupted meal period.

12 22. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
13 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
14 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES
15 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and
16 California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed
17 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
18 less than thirty (30) minutes for every shift of more than ten (10) hours per day.

19 23. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
20 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
21 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
22 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
23 not authorized and/or permitted to take a legally compliant rest period.

24 24. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
25 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
26 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
27 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations,
28 Section 11070(12).

- 1 25. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
2 and to other terminated or resigned members of the aggrieved employees and failed to timely
3 pay wages during employment.
- 4 26. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved
5 employees all wages earned twice per month.
- 6 27. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
7 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
8 statements in accordance with California law.
- 9 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
10 they were not providing complete and accurate pay statements in accordance with California
11 law to Plaintiff and the aggrieved employees.
- 12 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
13 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
14 California law, and that Defendant and DOES had the ability to pay such compensation, but
15 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
16 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
17 the other aggrieved employees.
- 18 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
19 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
20 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
21 owed, meal period premiums, and/or rest period premiums owed at the time of termination.
- 22 31. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
23 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
24 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.
- 25 32. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
26 Plaintiff and the aggrieved employees were entitled to receive be reimbursed for business
27 expenses in accordance with California law.
- 28 33. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as

1 all hourly non-exempt delivery drivers, cashiers, servers, hosts, bussers, cooks, kitchen
2 workers, team members, or similar job designations and titles, and all other current and former
3 similarly situated non-exempt, hourly employees of Defendant and/or DOES in California,
4 employed beginning one year prior to the date Plaintiff sent Notice to the LWDA.

5 34. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
6 respect to the issues or in any other way.

7 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
8 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
9 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

10 35. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
11 as if fully plead.

12 36. It is fundamental that an employer must pay its employees for all time worked. *California*
13 *Labor Code* sections 218 and 218.5 provides a right of action for nonpayment of wages.
14 *California Labor Code* section 222 prohibits the withholding of part of a wage. *California*
15 *Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage
16 scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum
17 wage. *California Labor Code* section 1194 states that an employee receiving less than the legal
18 minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of
19 this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving
20 less than the legal minimum wage is entitled to recover liquidated damages in an amount equal
21 to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only
22 permits deductions from wages when the employer is required or empowered to do so by state
23 or federal law or when the deduction is expressly authorized in writing by the employee for
24 specified purposes that do not have the effect of reducing the agreed upon wage.

25 37. *California Labor Code* section 351 provides in relevant part: “No employer or agent shall
26 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
27 employee by a patron, or deduct any amount from wages due an employee on account of a
28 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against

1 and as a part of the wages due the employee from the employer. Every gratuity is hereby
2 declared to be the sole property of the employee or employees to whom it was paid, given, or
3 left for.”

4 38. *California Code of Regulations*, Title 22, section 927-1, subdivision (d), clarifies, “When tips
5 are pooled and the employer determines the split of the tips, the tips paid from the pool are
6 wages.”

7 39. *California Labor Code* section 350 sets forth definitions for the words “employer” and “agent”
8 as they are used in *California Labor Code* section 351. *California Labor Code* section 350,
9 subdivision (a) provides: “‘Employer’ means every person engaged in any business or
10 enterprise in this state that has one or more persons in service under any appointment, contract
11 of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person
12 is the owner of the business or is operating on a concessionaire or other basis.” *California*
13 *Labor Code* section 350, subdivision (d) states the term “[a]gent” means “every person other
14 than the employer having the authority to hire or discharge any employee or supervise,
15 direct, or control the acts of employees.”

16 40. Plaintiff and those similarly situated aggrieved employees were employed by Defendant and/or
17 DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff for
18 all hours worked and were prohibited from making deductions that had the effect of reducing
19 the agreed upon wage.

20 41. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
21 similarly situated for all hours worked. For example, Defendant and/or DOES have not paid
22 for all the time Plaintiff and the aggrieved employees worked throughout the day, including,
23 but not limited to: rounding, before “shifts” start, after “shifts” end, and/or any other time in
24 the day during which employees were subject to the control of Defendant and/or DOES and/or
25 performing work tasks or otherwise had work duties during periods of time for which
26 Defendant and/or DOES are not paying them. Defendant’s and/or DOES’ failure to pay for all
27 hours worked while under Defendant’s and/or DOES’ control and/or while suffered or
28 permitted to work has resulted in Plaintiff and the aggrieved employees being deprived of

1 straight time wages throughout the statutory period.

2 42. Defendant and/or DOES have a continuous and consistent policy of failing to pay full wages
3 to Plaintiff and the aggrieved employees by deducting a portion of the wages earned by
4 Plaintiff and the aggrieved employees when they worked through their meal periods, are not
5 relieved of all work duties during their meal periods and/or when Defendant and/or DOES
6 recorded a meal period for Plaintiff and the aggrieved employees when no meal period was
7 taken.

8 43. Further, Defendant and/or DOES have a continuous and consistent policy of clocking-out
9 Plaintiff and those similarly situated for a thirty (30) minute meal period and/or otherwise
10 recording a meal period, even though Plaintiff and all aggrieved employees work through their
11 meal periods and/or were subject to Defendant's and/or DOES' control during meal periods.
12 Thus, Defendant and/or DOES shave and/or steal earned wages from Plaintiff and the
13 aggrieved employees for all time worked each and every day they work without a meal period
14 and have time deducted.

15 44. Additionally, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the
16 aggrieved employees for all of the tips they have earned during their shifts. This is because
17 Defendant and/or DOES operates under a uniformly unlawful tip pooling policy in which
18 managers and supervisors are provided with a portion of the tips earned by Plaintiff and the
19 aggrieved employees. Defendant and/or DOES pool the tips earned by the employees, provide
20 a cut for managers and supervisors, and then distribute the remainder to the employees. As a
21 result, Plaintiff's and the aggrieved employees' tips are to be considered wages, and
22 Defendant's and/or DOES' unlawful policy in which managers and supervisors are provided
23 with a portion of the tips earned by Plaintiff and the aggrieved employees is paramount to wage
24 theft

25 45. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the
26 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant
27 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved
28 employees' rights.

- 1 46. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
2 wages, and lost interest on such wages, and expenses.
- 3 47. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks,
4 kitchen workers, team members, or similar job designations and titles, and all similarly situated
5 non-exempt aggrieved employees who are presently or formerly employed by Defendant
6 and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the
7 State of California.
- 8 48. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant and/or
9 DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under
10 the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the general public
11 to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* §
12 2699.5.
- 13 49. Plaintiff, as a representative of the people of the State of California, will seek any and all
14 penalties otherwise capable of being collected by the Labor Commission and/or the
15 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
16 set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any
17 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.
- 18 50. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
19 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
20 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
21 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
22 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).
- 23 51. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
24 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
25 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
26 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
27 pursuant to *Cal. Lab. Code* § 558(a).
28

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

52. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

53. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

54. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

55. Defendant and/or DOES failed to pay overtime when Plaintiff and the aggrieved employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week.

56. Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees for all hours worked, including, but not limited to, rounding, before "shifts" start, after "shifts" end, and/or any other time in the day when Plaintiff and similarly situated hourly non-exempt employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties. Plaintiff and the aggrieved employees frequently work over eight daily and forty weekly hours, and, therefore, this compensable time is owed at the overtime rates of Plaintiff and the aggrieved employees.

57. Additionally, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated hourly non-exempt employees for all of the hours they worked, including, but not limited to, clocking Plaintiff and similarly situated hourly non-exempt employees out for a thirty (30) minute meal period and/or otherwise recording a meal

period, even though Plaintiff and similarly situated hourly non-exempt employees work through their meal periods and/or were unable to take meal periods. Plaintiff and the aggrieved employees frequently work over eight daily and forty weekly hours, and, therefore, this compensable time is owed at the overtime rates of Plaintiff and the aggrieved employees

58. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

59. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks, kitchen workers, team members, or similar job designations and titles, and all similarly situated non-exempt aggrieved employees who are presently or formerly employed by Defendant and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the State of California.

60. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

61. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

62. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

63. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein

1 as if fully plead.

2 64. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any
3 person for a work period of more than five (5) hours without providing a meal period of not
4 less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the
5 employee is to be completely free of the employer's control and must not perform any work
6 for the employer. If the employee does perform work for the employer during the thirty (30)
7 minute meal period, the employee has not been provided a meal period in accordance with the
8 law. Also, the employee is to be compensated for any work performed during the thirty (30)
9 minute meal period.

10 65. In addition, an employer may not employ an employee for a work period of more than ten (10)
11 hours per day without providing the employee with another meal period of not less than thirty
12 (30) minutes.

13 66. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in
14 accordance with the above requirements, the employer shall pay the employee one (1) hour of
15 pay at the employee's regular rate of compensation for each workday that the meal period is
16 not provided.

17 67. Defendant and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to
18 Plaintiff and the aggrieved employees when they worked for work periods of more than five
19 (5) consecutive hours before the end of the fifth hour of work. As such, Plaintiff and the
20 aggrieved employees were required to work over five (5) consecutive hours at a time without
21 being provided a thirty (30) minute uninterrupted meal period within that time.

22 68. Defendant and/or DOES failed to provide second thirty (30) minute, uninterrupted meal
23 periods to Plaintiff and the aggrieved employees when they worked for work periods of more
24 than ten (10) consecutive hours before the end of the tenth hour of work. As such, Plaintiff and
25 the aggrieved employees were required to work over ten (10) consecutive hours at a time
26 without being provided a second thirty (30) minute uninterrupted meal period within that time.

27 69. Alternatively, Defendant and/or DOES breached the legal duty to provide meal periods to
28 employees by imposing a continuous and consistent policy of requiring Plaintiff and the

aggrieved employees to work through their meal periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

70. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant and/or DOES willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

71. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks, kitchen workers, team members, or similar job designations and titles, and all similarly situated non-exempt aggrieved employees who are presently or formerly employed by Defendant and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the State of California.

72. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

73. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

74. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

75. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages

pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

76. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

77. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[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 week period. The authorized 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.”

78. At all relevant times, Defendant and/or DOES fail to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. Specifically, Defendant and/or DOES do not provide Plaintiff and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor do Defendant and/or DOES provide employees with a rest period per four (4) hours worked or major fraction thereof.

79. Alternatively, Defendant and/or DOES also breach the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

80. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7.

81. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks, kitchen workers, team members, or similar job designations and titles, and all similarly situated

non-exempt aggrieved employees who are presently or formerly employed by Defendant and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the State of California.

82. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 226.7.

83. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

84. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

85. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

86. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

87. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay,

1 in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left
2 Defendant's and/or DOES' employ or who were terminated.

3 88. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant
4 and/or DOES during the last year were entitled to be promptly paid all lawful compensation,
5 and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

6 89. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
7 an employee, the wages earned and unpaid at the time of discharge are due and payable
8 immediately, and if an employee quits his or her employment, his or her wages shall become
9 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
10 seventy-two (72) hours notice of his or her intention to quit, in which case the employee is
11 entitled to his or her wages at the time of quitting.

12 90. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
13 pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant
14 and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their
15 leaving Defendant's and/or DOES' employ.

16 91. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
17 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
18 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
19 Cal. Lab. Code §§ 201 and 202.

20 92. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
21 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
22 from the due date thereof at the same rate until paid or until an action is commenced; but the
23 wages shall not continue for more than thirty (30) days.

24 93. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
25 at termination, is an aggrieved employee with standing to bring an action under the
26 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
27 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
28 2699.5.

1 94. Plaintiff, as a representative of the people of the State of California, seeks all penalties
2 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
3 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab.
4 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
5 following provisions: sections 201 through 203.

6 95. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks,
7 kitchen workers, team members, or similar job designations and titles, and all similarly situated
8 non-exempt aggrieved employees who are presently or formerly employed by Defendant
9 and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the
10 State of California.

11 96. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
12 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
14 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

16 97. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
17 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
18 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
19 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
20 pursuant to Cal. Lab. Code § 558(a).

21 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
22 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply**
23 **with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

24 98. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
25 as if fully plead.

26 99. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage
27 statements all deductions from payment of wages and to accurately report total hours worked
28 by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant

1 and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees,
2 either as an detachable part of the check, draft, or voucher paying the employee’s wages, or
3 separately when wages are paid by personal check or cash, an accurate itemized statement in
4 writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the
5 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
6 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
7 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
8 dates of the period for which the employee is paid, (7) the name of the employee and only the
9 last four digits of his or her social security number or an employee identification number other
10 than the social security number, (8) the name and address of the legal entity that is the
11 employer...(9) all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate and the corresponding number of hours worked at
13 each hourly rate by the employee....”

14 100. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
15 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day
16 and year, and a copy of the statement and the record of the deductions shall be kept on file by
17 the employer for at least three years at the place of employment or at a central location within
18 the State of California.”

19 101. Defendant and/or DOES have knowingly and intentionally failed to comply with *Labor Code*
20 section 226(a) on each and every wage statement provided to Plaintiff and the other aggrieved
21 employees.

22 102. Defendant and/or DOES knowingly and intentionally did not include the gross and net wages
23 earned on wage statements. Defendant and/or DOES therefore knowingly and intentionally
24 failed to itemize the gross and net wages earned on Plaintiff’s and the aggrieved employees’
25 wage statements

26 103. In every pay period during the period of the relevant statute of limitations, Defendant and/or
27 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
28 as *Labor Code* section 226, subsection (a), requires. In every pay period during the period of

1 the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did
2 not include the total hours worked on wage statements. Defendant and/or DOES therefore
3 knowingly and intentionally failed to itemize the total hours worked on Plaintiff's and the
4 aggrieved employees' wage statements.

5 104. Defendant and/or DOES have a continuous policy of not paying Plaintiff and similarly
6 aggrieved employees for all hours worked. Defendant and/or DOES have not paid for all the
7 time Plaintiff and similarly aggrieved employees worked throughout the day, including, but
8 not limited to rounding, before "shifts" start, after "shifts" end, and/or any other time in the
9 day when the employees were performing work tasks, subject to the control of Defendant
10 and/or DOES and/or otherwise had work duties. Additionally, Defendant and/or DOES have
11 had a continuous policy of not paying Plaintiff and the aggrieved employees for all hours
12 worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and
13 the aggrieved employees out for a thirty (30) minute meal period and/or otherwise recorded a
14 meal period, even though Plaintiff and the aggrieved employees work through their meal
15 periods and/or were unable to take meal periods. Thus, Defendant and/or DOES shaves/steals
16 earned wages from Plaintiff and the aggrieved employees every day they work without a meal
17 period and have time deducted. As Defendant and/or DOES knew or had reason to know
18 Plaintiff and the aggrieved employees were working during this time, Defendant and/or DOES
19 knowingly and intentionally failed to comply with *Labor Code* Section 226, subdivision (a).

20 105. Defendant and/or DOES violated the Labor Code section 226, subdivision (a) requirement of
21 itemizing all deductions from wages. As the tips earned by Plaintiff and the aggrieved
22 employees are to be considered wages under California law, the deduction of these wages that
23 occurs when managers and supervisors unlawfully receive a portion of the tips earned by
24 Plaintiff and the aggrieved employees should be present on each and every wage statement.
25 Nothing concerning Plaintiff's and the aggrieved employees' tips or any deductions therefrom
26 are present on their wage statements.

27 106. Throughout the statutory period, because of the knowing and intentional failure by Defendant
28 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the

aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

107. Further, in addition to any penalties levied upon Defendant and/or DOES for its failure to comply with *Labor Code* section 226 subdivision (a)'s requirement to provide Plaintiff and the aggrieved employees accurate, itemized wage statements, *Labor Code* section 226.3 assesses additional penalties for the failure to keep the records required in subdivision (a) of Section 226. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES to maintain records that "accurately shows all of the information required by this subdivision." Defendant and/or DOES has violated its statutory duty to maintain records for Plaintiff and the aggrieved employees that contain all of the information under *Labor Code* section 226(a)(1) through (9).

108. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks, kitchen workers, team members, or similar job designations and titles, and all similarly situated non-exempt aggrieved employees who are presently or formerly employed by Defendant and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the State of California.

109. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

110. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

111. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.

Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

112. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

113. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

114. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

115. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

116. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

117. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

- 1 118. Alternatively, Defendant and/or DOES failed to pay wages to Plaintiff and the aggrieved
2 employees earned within seven (7) calendar days of the end of the payroll period in which the
3 wages were earned.
- 4 119. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that
5 were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code §
6 204.
- 7 120. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks,
8 kitchen workers, team members, or similar job designations and titles, and all similarly situated
9 non-exempt aggrieved employees who are presently or formerly employed by Defendant
10 and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the
11 State of California.
- 12 121. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
13 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
14 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
15 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
16 2699.5 for violations of Cal. Lab. Code § 204.
- 17 122. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 22 123. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

27 \

28 \

EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Maintain a Lawful Tip Pooling Policy (Cal. Lab. Code § 2698 et. seq.)

124. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

125. *California Labor Code* section 351 provides in relevant part: “No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.”

126. *California Labor Code* section 350 sets forth definitions for the words “employer” and “agent” as they are used in section 351. Section 350, subdivision (a) provides: “‘Employer’ means every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis.” Section 350, subdivision (d) states the term “[a]gent” means “every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees.”

127. Defendant and/or DOES have a continuous policy of not paying Plaintiff and similarly aggrieved employees for all of the tips they have earned during their shifts. This is because Defendant and/or DOES operates under a uniformly unlawful tip pooling policy in which managers and supervisors are provided with a portion of the tips earned by Plaintiff and similarly aggrieved employees. Defendant’s and/or DOES’ managers and supervisors pool the tips earned by the employees, take their cut, and then distribute the remainder to the employees.

128. Defendant’s and/or DOES’ managers and supervisors have the authority to hire or discharge or supervise, direct or control Plaintiff’s and similarly aggrieved employees’ acts as “agents”

1 within the meaning of section 350, subdivision (d). As such, pursuant to section 351's bar on
2 an "agent's" ability to "collect, take, or receive any gratuity" earned by Plaintiff and similarly
3 aggrieved employees, their participation in Defendant's and/or DOES' tip pooling policy
4 violates California law.

5 129. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks,
6 kitchen workers, team members, or similar job designations and titles, and all similarly situated
7 non-exempt aggrieved employees who are presently or formerly employed by Defendant
8 and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the
9 State of California.

10 130. Plaintiff, as a non-exempt employee subject to Defendant's and/or DOES' unlawful conduct,
11 is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
12 satisfied all prerequisites to serve as a representative of the general public to enforce
13 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
14 violations of Cal. Lab. Code §§ 350 and 351.

15 131. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
16 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
17 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
18 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
19 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

20 132. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
21 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
22 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
23 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
24 pursuant to Cal. Lab. Code § 558(a).

25 **NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
26 **Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business**
27 **Expenses (California Labor Code §2698 et. seq.)**

28 133. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein

1 as if fully plead.

2 134. California Labor Code section 2802 provides: “An employer shall indemnify his or her
3 employees for all necessary expenditures or losses incurred by the employee in direct
4 consequence of the discharge of his or her duties, or of his or her obedience to the directions
5 of the employer...[which includes] all reasonable costs, including, but not limited to, attorneys’
6 fees incurred by the employee enforcing the rights granted by this section.”

7 135. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without
8 receiving reimbursement from Defendant and/or DOES. These expenses include, but are not
9 limited to, having to use their personal cell phones for business purposes, such as GPS, and
10 communicating with Defendant and/or DOES throughout the workday. *California Labor Code*
11 section 2802(a) entitles Plaintiff and the aggrieved employees to reimbursement for said
12 necessary expenditures, plus interest and expenses.

13 136. These claims are for Plaintiff and all delivery drivers, cashiers, servers, hosts, bussers, cooks,
14 kitchen workers, team members, or similar job designations and titles, and all similarly situated
15 non-exempt aggrieved employees who are presently or formerly employed by Defendant
16 and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the
17 State of California.

18 137. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or
19 DOES failed to reimburse, is an aggrieved employee with standing to bring an action under
20 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
21 public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code*
22 section 2699.5 for violations of *Labor Code* section 2802.

23 138. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
24 herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
25 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
26 per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
27 employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).
28

1 **V. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
3 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 4 A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
5 B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for
6 failure to provide compliant meal periods;
7 C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
8 for each pay period during which an employee was underpaid due to failure to provide paid
9 meal periods;
10 D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
11 for failure to provide all rest periods;
12 E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for each pay period during which an employee was underpaid due to failure to provide paid
14 rest periods;
15 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
16 for failure to timely pay wages at separation;
17 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
18 for failure to provide compensation at the regular, overtime, and double time rate for all time
19 worked;
20 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
21 for failure to provide compensation at the minimum wage;
22 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
23 for failure to provide accurate, itemized wage statements;
24 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
25 for failure to maintain legally required records;
26 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
27 for failure to pay employees all wages owed twice per month;
28 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*

- 1 for failure to adopt a lawful tip pooling policy;
- 2 M. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, et. seq.
- 3 for failure to reimburse business expenses; and
- 4 N. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a jury trial.

7 **MARA LAW FIRM, PC**

8

9 Date: April 25, 2023

Signed:



David Mara, Esq.
Matthew Crawford, Esq.
Taylor O'Donnell, Esq.
Attorneys for Plaintiff MICHAEL
TAVAREZ, on behalf of himself and all
others similarly situated, and on behalf of the
general public