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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO
11

12 DENISE ORTIZ AMEZCUA, as an
13 aggrieved employee pursuant to the
Private Attorneys General Act
14 (“PAGA”), on behalf of the State of
California and other non-party
15 Aggrieved Employees,

16 Plaintiff,

17 vs.

18 RESTAURANTS DEL SUR, LLC, a
California limited liability company;
19 M & N FOODS, LLC, a California
limited liability company; SDC
20 RESTAURANTS LLC, a California
limited liability company; and DOES
21 1 through 10, inclusive,

22 Defendants.
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Case No.: 37-2023-00020632-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 Denise Ortiz Amezcua, 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 this case on March 10, 2023, until judgment (“non-party Aggrieved Employees”). Plaintiff’s
13 share of civil penalties sought in this action does not exceed \$75,000.
14

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 Denise Ortiz Amezcua is a resident of San Diego, in San Diego County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately September 2021 to October 2022. Plaintiff worked for Defendants as a Crew Person, Cashier, and Shift Leader Trainee at their Carl's Jr. restaurant location in San Diego, California. Plaintiff typically worked four (4) to seven (7) hours per day and five (5) days per week or more. At the time Plaintiff's employment with Defendants ended, she was compensated approximately \$15.00 per hour. Plaintiff's job duties included, without limitation, cashiering, cooking, cleaning, monitoring work assignments, and accounting for register funds.

7. RESTAURANTS DEL SUR, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

8. M & N FOODS, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

9. SDC RESTAURANTS LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California.

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

1 become known.

2 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
3 were the partners, agents, owners, or managers of RESTAURANTS DEL SUR, LLC; M & N
4 FOODS, LLC; and SDC RESTAURANTS LLC at all relevant times.

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

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

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

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

1 Employees, Defendants are jointly and severally liable for the civil penalties available to
2 Plaintiff and other non-party Aggrieved Employees under the law.

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

- 6 (a) jointly exercised meaningful control over the work performed by Plaintiff
7 and other non-party Aggrieved Employees;
- 8 (b) jointly exercised meaningful control over Plaintiff's and other non-party
9 Aggrieved Employees' wages, hours, and working conditions, including
10 the quantity, quality standards, speed, scheduling, and operative details
11 of the tasks performed by Plaintiff and other non-party Aggrieved
12 Employees;
- 13 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
14 perform work which is an integral part of Defendants' businesses; and
- 15 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
16 Employees as a matter of economic reality in that Plaintiff and other non-
17 party Aggrieved Employees were dependent on Defendants, who shared
18 the power to set the wages of Plaintiff and other non-party Aggrieved
19 Employees and determined their working conditions, and who jointly
20 reaped the benefits from the underpayment of their wages and
21 noncompliance with other statutory provisions governing their
22 employment.

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

26 18. RESTAURANTS DEL SUR, LLC; M & N FOODS, LLC; SDC
27 RESTAURANTS LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

28 19. Adherence to the fiction of the separate existence of Defendants would permit an

1 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
2 liability for the wrongful acts committed by them under the name DEL SUR.

3 20. Plaintiff further alleges, upon information and belief, that the Defendants
4 RESTAURANTS DEL SUR, LLC; M & N FOODS, LLC; and SDC RESTAURANTS LLC are
5 alter egos of each other for the following reasons:

6 (a) According to Carl's Jr. Restaurants' 2022 Franchise Disclosure
7 Document and San Diego Business Tax Certificate documentation, and
8 on information and belief, restaurant locations registered to SDC
9 RESTAURANTS LLC are currently or were formerly owned by
10 RESTAURANTS DEL SUR, LLC and M & N FOODS, LLC;

11 (b) On information and belief, RESTAURANTS DEL SUR, LLC; M & N
12 FOODS, LLC; and SDC RESTAURANTS LLC employ the same
13 directors and/or officers, including, but not limited to: Don Diaz, who
14 currently serves as Director of Information Technology of SDC
15 RESTAURANTS LLC and formerly served as Information Technology
16 Manager of M & N FOODS, LLC (according to his LinkedIn profile¹);

17 (c) According to their most recent "Statement of Information" forms filed
18 with the California Secretary of State, RESTAURANTS DEL SUR, LLC
19 and M & N FOODS, LLC have the same principal office address, "50
20 BRAEBURN LANE, NEWPORT BEACH, CA 92660";

21 (d) According to their most recent "Statement of Information" forms filed
22 with the California Secretary of State RESTAURANTS DEL SUR, LLC
23 and M & N FOODS, LLC share the same officer and/or director and same
24 agent for service of process, Michael Borchard; and

25 (e) On information and belief, RESTAURANTS DEL SUR, LLC; M & N
26 FOODS, LLC; and SDC RESTAURANTS LLC utilize the same
27

28 ¹ Don Diaz – Director of Information Technology – SDC Restaurants, LLC | LinkedIn,
<https://www.linkedin.com/in/don-diaz-82270450/> (last visited May 12, 2023).

1 standardized employment forms and issue the same employment policies.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 21. Defendants are Carl's Jr. fast food restaurant franchisees. Upon information and
4 belief, Defendants maintain a single, centralized Human Resources (HR) department at their
5 corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees
6 working for Defendants in California, which is responsible for the recruiting and hiring of new
7 employees, and communicating and implementing Defendants' company-wide policies,
8 including timekeeping policies and meal and rest period policies, to employees throughout
9 California.

10 22. In particular, Plaintiff and other non-party Aggrieved Employees, on information
11 and belief, received the same standardized documents and/or written policies. Upon
12 information and belief, the usage of standardized documents and/or written policies, including
13 new-hire documents, indicate that Defendants dictated policies at the corporate level and
14 implemented them company-wide, regardless of their employees' assigned locations or
15 positions. Upon information and belief, Defendants set forth uniform policies and procedures
16 in several documents provided at an employee's time of hire.

17 23. Upon information and belief, Defendants maintain a centralized Payroll
18 department at their corporate headquarters in San Diego, California, which processes payroll
19 for all non-exempt, hourly paid employees working for Defendants at their various locations
20 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
21 upon information and belief, Defendants issue the same formatted wage statements to all non-
22 exempt, hourly paid employees in California, irrespective of their work locations. Upon
23 information and belief, Defendants process payroll for departing employees in the same manner
24 throughout the State of California, regardless of the manner in which each employee's
25 employment ends.

26 24. Defendants continue to employ non-exempt or hourly paid employees in
27 California.

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

mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

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

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

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

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

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

1 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
2 additional hour of pay at their regular rates of pay when they did not receive a timely,
3 uninterrupted, thirty (30) minute meal period.

4 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
6 periods in accordance with the California Labor Code and applicable IWC Wage Order or
7 payment of one (1) additional hour of pay at their regular rates of pay when they were not
8 authorized and permitted to take a compliant rest period. In violation of the California Labor
9 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to
10 take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
11 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
12 they were not authorized and permitted to take a compliant rest period.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive complete and accurate wage statements in accordance with California law. In violation
16 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
17 provided complete and accurate wage statements.

18 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that they had a duty to maintain accurate and complete payroll records in
20 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
21 and intentionally failed to do so.

22 34. 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 timely payment of wages during their employment. In violation of the California Labor Code,
25 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
26 including, but not limited to, overtime wages, minimum wages, meal and rest period premiums,
27 and/or reporting time pay, within permissible time periods.

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 timely payment of all wages earned upon termination of employment. In violation of the
3 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
4 payment of all wages due, including, but not limited to, overtime wages, minimum wages, meal
5 and rest period premiums, and/or reporting time pay, within permissible time periods.

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 be
8 paid reporting time pay when they reported to work for their usual or scheduled shift but were
9 put to work for less than half of the usual or scheduled shift. In violation of the California Labor
10 Code and applicable IWC Wage Order, Defendants did not pay Plaintiff and other non-party
11 Aggrieved Employees all reporting time pay due.

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

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

24 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
26 and other non-party Aggrieved Employees for all hours worked, and that Defendants had the
27 financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to
28 do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they

1 were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter "Employee's Notice") to the LWDA and by certified mail to
19 the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.

22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be accompanied
24 by a filing fee of seventy-five dollars (\$75).

25 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar days
28 of the postmark date of the Employee's Notice. Upon receipt of the

1 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
2 (65) calendar days of the postmark date of the Employee's Notice, the
3 aggrieved employee may commence a civil action pursuant to California
4 Labor Code section 2699 to recover civil penalties in addition to any other
5 penalties to which the employee may be entitled.

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

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

14 (b) An aggrieved employee's notice filed with the LWDA pursuant to
15 2699.3(c) and any employer response to that notice shall be accompanied
16 by a filing fee of seventy-five dollars (\$75).

17 (c) The employer may cure the alleged violation within thirty-three (33)
18 calendar days of the postmark date of the notice. The employer shall give
19 written notice by certified mail within that period of time to the aggrieved
20 employee or representative and the agency if the alleged violation is
21 cured, including a description of actions taken, and no civil action
22 pursuant to Section 2699 may commence. If the alleged violation is not
23 cured within the 33-day period, the employee may commence a civil
24 action pursuant to Section 2699.

25 45. On March 10, 2023, Plaintiff provided written notice by online filing to the
26 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
27 Code alleged to have been violated, including facts and theories to support the alleged
28 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice

1 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
2 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
3 PAGA Case Number LWDA-CM-941222-23. A true and correct copy of Plaintiff's written
4 notice to the LWDA and Defendants March 10, 2023, is attached hereto as "Exhibit 1."

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

8 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
10 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
11 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

12 48. Labor Code section 558(a) provides "[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commission
15 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
16 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
17 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
18 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
19 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
20 criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney
21 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
22 herself, all other non-party Aggrieved Employees, and the State of California against
23 Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable
24 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
25 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
26 of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

27 49. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved

1 Employees' rights by violating various sections of the California Labor Code as set forth above.

2 50. As set forth below, Defendants have violated numerous provisions of both the
3 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
4 Order.

5 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
6 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private
7 attorney general, seeks assessment and collection of civil penalties for herself, all other non-
8 party Aggrieved Employees, and the State of California against Defendants for violations of
9 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d),
10 1182.12, 1194, 1197, 1198, and 2802.

11 **FIRST CAUSE OF ACTION**

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

13 **(Against all Defendants)**

14 52. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 53. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
18 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
19 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved
20 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
21 sections not found in section 2699.5, including sections 516 and 1182.12.

22 54. Defendants' conduct, as alleged herein, violates numerous sections of the
23 California Labor Code, including, but not limited to, the following:

24 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
25 Wage Order for Defendants' failure to compensate Plaintiff and other
26 non-party Aggrieved Employees with all required overtime pay, as set
27 forth below;

28 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable

1 IWC Wage Order for Defendants' failure to include all forms of
2 remuneration in the "regular rate" of pay as required by law for purposes
3 of paying overtime wages and/or meal and rest period premiums to other
4 non-party Aggrieved Employees, as set forth below;

5 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the
6 applicable IWC Wage Order for Defendants' failure to compensate
7 Plaintiff and other non-party Aggrieved Employees with at least
8 minimum wages for all hours worked, as set forth below;

9 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
10 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
11 and other non-party Aggrieved Employees with meal periods, as set forth
12 below;

13 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
14 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
15 and other non-party Aggrieved Employees to take rest periods, as set forth
16 below;

17 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
18 IWC Wage Order for failure to provide accurate and complete wage
19 statements to Plaintiff and other non-party Aggrieved Employees, as set
20 forth below;

21 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
22 IWC Wage Order for failure to maintain payroll records, as set forth
23 below;

24 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
25 during employment, as set forth below;

26 (i) Violation of Labor Code section 201 and 202 for failure to pay all earned
27 wages upon termination, as set forth below;

28 (j) Violation of Labor Code section 1198 and the applicable IWC Wage

Order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their usual or scheduled shifts, as set forth below;

(k) 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; and

(l) 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.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. 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.”

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

57. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

58. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
2 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
3 An employee's regular rate of pay includes all remuneration for employment paid to, or on
4 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

11 60. During the relevant time period, Defendants willfully failed to pay all overtime
12 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
13 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
14 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
15 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
16 not recorded.

17 61. First, during the relevant period, Defendants had, and continue to have,
18 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
19 Employees to perform various work-related tasks while off-the-clock before and after their
20 shifts. For example, because Defendants' company-wide timekeeping system was integrated
21 with the company's point-of-sale ("POS") system, Plaintiff and other non-party Aggrieved
22 Employees often had to wait three (3) or more minutes to clock in, because other employees
23 were using the POS system to handle customer transactions. As a further example, twice per
24 week, Defendants' management instructed Plaintiff to perform restaurant opening and closing
25 tasks, such as unlocking doors, disarming or setting the alarm, and turning on or shutting off
26 the lights, but Defendants did not compensate her for this time.

27 62. Moreover, other non-party Aggrieved Employees would clock out at the end of
28 their shifts and wait for five (5) minutes off-the-clock for management to perform closing duties,

1 before they were permitted to exit the restaurant. As a result of these policies and/or practices,
2 other non-party Aggrieved Employees were subject to Defendants' control after they had
3 completed their shifts, but were not compensated for this time. Additionally, Plaintiff and other
4 non-party Aggrieved Employees were required to respond to their personal mobile devices and
5 complete other work-related tasks outside of their scheduled shifts. For example, twice per
6 week while off-the-clock, Plaintiff was required to respond to phone calls regarding cashiering,
7 cooking, preparing food, and other work assignments for 10 minutes per instance. Thus,
8 Defendants failed to track this time spent working before, after, and outside of scheduled shifts,
9 and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

10 63. Second, during the relevant period, Defendants had, and continue to have,
11 company-wide policy and/or practice of strictly staffing their restaurant locations based on the
12 labor hours allocated by each location's labor or payroll budget set by corporate. Defendants'
13 use of labor budgets, combined with heavy workloads, resulted in understaffing and a failure to
14 provide Plaintiff and other non-party Aggrieved Employees with adequate meal period
15 coverage, because there were too few employees on duty to handle the workload and attend to
16 customers. Moreover, Defendants had a company-wide practice of failing to schedule meal
17 periods, which caused Plaintiff and other non-party Aggrieved Employees to not be relieved of
18 their duties for compliant meal periods. As a result of this inadequate meal period coverage,
19 Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted 30-
20 minute meal periods during shifts when they were entitled to receive a meal period. For
21 example, approximately twice per week, Plaintiff would have her meal periods interrupted
22 and/or shortened to assist with or respond to questions regarding food preparation and
23 cashiering. Consequently, Plaintiff and other non-party Aggrieved Employees worked through
24 and/or had their unpaid meal periods interrupted to complete their assigned workloads.

25 64. Further, on information and belief, because Defendants frowned upon employees
26 accruing meal period penalties, Defendants pressured Plaintiff and other non-party Aggrieved
27 Employees to reflect compliant meal periods, regardless of whether they had received a
28 compliant meal period or not, to try to limit the meal penalties that would need to be paid by

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

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

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

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

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

FAILURE TO PAY MINIMUM WAGES

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

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

69. As set forth above, Defendants had, and continue to have, company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to work off-the-clock, including, but not limited to, waiting to clock in; performing opening and closing restaurant duties such as unlocking or locking doors, disarming or setting the alarm, and turning on or shutting the lights off; waiting for management to perform closing duties; and responding to communications on their personal mobile devices. Defendants failed to track this time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

70. Also, as set forth above, due to Defendants’ company-wide policies and/or practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and/or were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, Defendants’ management pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, during the relevant time period, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods, because

Defendants' timekeeping system locked out Plaintiff and other non-party Aggrieved Employees for 30 minutes when they clocked out for a meal period. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants 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, and 1198.

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

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

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

74. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

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

7 77. First, during the relevant time period, as stated, Defendants had, and continue to
8 have, a company-wide policy and/or practice of understaffing their locations due to labor
9 budgeting, which, combined with the assignment of heavy workloads and failure to schedule meal
10 periods, resulted in a lack of meal period coverage and prevented Plaintiff and other non-party
11 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
12 entitled. For example, Plaintiff's meal periods were interrupted twice per week and cut short, in
13 order to respond to questions regarding preparing food and cashiering. Thus, Plaintiff and other
14 non-party Aggrieved Employees missed their meal periods entirely, had their meal periods cut
15 short to return to work, and/or waited extended periods of time before taking meal periods.

16 78. Furthermore, as stated, because Defendants frowned upon employees accruing
17 meal period penalties, Defendants' management pressured Plaintiff and other non-party
18 Aggrieved Employees to clock out for meal periods to reflect compliant meal periods, regardless
19 of whether they had received a compliant meal period, in order to strictly limit meal penalties that
20 would need to be paid by Defendants. For example, Plaintiff was required to clock out for her
21 meal period to record that she had received compliant meal periods on shifts when she had not, in
22 fact, received these timely meal periods. Also, as stated, Defendants' company-wide timekeeping
23 system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours
24 worked when their meal periods were shortened or interrupted, because the system locked out
25 Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period, and
26 would not permit them to clock back in from a meal period before 30 minutes had lapsed.

27 79. As a result, Plaintiff and other non-party Aggrieved Employees would be forced
28 to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods

1 cut short and/or had to forgo their meal periods altogether. For example, Plaintiff missed her meal
2 periods altogether and/or had her meal periods interrupted or cut short because the restaurant was
3 severely understaffed, and employees were forced to work through or return early from meal
4 periods in order to continue their duties. Additionally, Plaintiff frequently took her meal periods
5 late, after the end of her fifth hour of work, in order to fulfill her kitchen duties such as cooking,
6 preparing orders, and cashiering.

7 80. Moreover, Defendants did not provide other non-party Aggrieved Employees with
8 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
9 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
10 days that they were entitled to meal periods and were not relieved of all duties.

11 81. Furthermore, Defendants had a company-wide policy of requiring all newly hired
12 employees to sign blanket meal period waivers at or near their time of hire. Defendants took the
13 position that non-exempt, hourly paid employees had waived their rights to first meal periods for
14 the entirety of their employment and, on that basis, did not provide them with all meal periods to
15 which they were entitled. Defendants' presumption that meal periods would not be provided for
16 shifts in excess of five (5) hours but less than six (6) hours, due to blanket meal period waivers
17 signed at or near the time of hire, discouraged and impeded Plaintiff and other non-party
18 Aggrieved Employees from taking all meal periods to which they were entitled.

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

23 [A]fter the meal break obligation is triggered . . . an employer is put to a
24 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
25 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.

26 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants required
27 Plaintiff and other non-party Aggrieved Employees to sign meal period waivers simultaneously
28 at or near their time of hire (as opposed to on a specific work day) renders them invalid and

unenforceable, because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal periods did not arise until they had employed them for a full five (5) hours.

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

84. Furthermore, Defendants 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, Plaintiff and other non-party Aggrieved Employees have not received premium pay for missed, late, shortened, or interrupted meal periods. Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees the correct rate of pay for premiums because Defendants systematically failed to include all forms of compensation such as incentive pay and/or nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

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

1 87. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 88. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest periods
10 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
11 must “relinquish any control over how employees spend their break time, and relieve their
12 employees of all duties—including the obligation that an employee remain on call. A rest
13 period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
14 257, 273 (2016).

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

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

28 91. Furthermore, Defendants maintained a company-wide on-premises rest period

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

7 92. 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, during her employment, Plaintiff had to forego her second rest periods
11 entirely to meet customer demands due to lack of coverage.

12 93. 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. Alternatively, to the
16 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
17 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
18 Employees at the correct rate of pay for premiums because Defendants failed to include all
19 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
20 remuneration, in the regular rate of pay.

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

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

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

28 95. At all relevant times herein, California Labor Code section 226(a) provides that

1 every employer shall furnish each of his or her employees an accurate and complete itemized
2 wage statement in writing, including, but not limited to, the name and address of the legal entity
3 that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable
4 rates of pay.

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

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

23 98. Additionally, because Defendants did not calculate other non-party Aggrieved
24 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
25 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
26 with section 226(a)(1) and did not list the correct amount of net wages in violation of section
27 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the
28 pay period, namely, correct rates of pay for overtime wages and/or meal and rest period

1 premiums, in violation of section 226(a)(9).

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

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

22 101. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
24 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
25 of any employees for longer hours than those fixed by the order or under conditions of labor
26 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
27 are required to keep accurate time records showing when the employee begins and ends each
28 work period and meal period. During the relevant time period, Defendants engaged in company-

1 wide practices and/or policies of failing to record actual hours worked (including falsifying time
2 records by recording that compliant meal periods were taken regardless of if or when meal periods
3 were actually taken), and thereby failed to keep accurate records of work period and meal period
4 start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation of
5 section 1198. Furthermore, in light of Defendants' failure to provide other non-party Aggrieved
6 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
7 no records of meal start and end times for second meal periods.

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

11 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

12 **VIOLATION OF LABOR CODE SECTION 204**

13 103. At all relevant times herein set forth, California Labor Code section 204 requires
14 that all wages earned by any person in any employment between the 1st and the 15th days,
15 inclusive, of any calendar month, other than those wages due upon termination of an employee,
16 are due and payable between the 16th and the 26th day of the month during which the labor was
17 performed. Labor Code section 204 further provides that all wages earned by any person in any
18 employment between the 16th and the last day, inclusive, of any calendar month, other than
19 those wages due upon termination of an employee, are due and payable between the 1st and the
20 10th day of the following month.

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

27 105. During the relevant time period, Defendants willfully failed to pay Plaintiff and
28 other non-party Aggrieved Employees all wages due to them within any time period specified

1 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
2 wages, meal and rest period premiums, and/or reporting time pay.

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

5 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

14 108. On information and belief, Defendants had, and continue to have, a company-
15 wide practice or policy of paying departing employees their final wages on the next regular pay
16 cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and
17 202. For example, Plaintiff was terminated over the phone on October 11, 2022; however, she
18 did not receive all of her final wages until approximately October 20, 2022. Thus, Defendants
19 failed to pay Plaintiff her final wages immediately, in violation of California Labor Code section
20 201.

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

26 110. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
27 who are no longer employed by Defendants their wages earned and unpaid at the time of
28 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor

Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO PAY REPORTING TIME PAY

VIOLATION OF LABOR CODE SECTION 1198

111. 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.”

112. California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

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

114. Defendants had, and continue to have, a company-wide practice of sending Plaintiff and other non-party Aggrieved Employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Plaintiff

1 and other non-party Aggrieved Employees for half of their usual or scheduled shift. For
2 example, when scheduled to work an eight (8) hour shift, Plaintiff was sent home before three
3 (3) hours had elapsed because business was slow, but was only paid for the time that she had
4 worked. Although Plaintiff and other non-party Aggrieved Employees would report to work
5 based on the schedule that Defendants provided to them, Defendants would send them home
6 before they had worked at least half of their scheduled shifts without giving them reporting time
7 pay.

8 115. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
9 properly compensated with reporting time pay in violation of California Labor Code section
10 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Plaintiff and other non-
11 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
12 Code sections 2699(a), (f), and (g).

13 **FAILURE TO PAY SPLIT-SHIFT PAY**

14 **VIOLATION OF LABOR CODE SECTION 1198**

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

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

26 118. Defendants willfully violated California Labor Code section 1198 and California
27 Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff
28 and other non-party Aggrieved Employees a split-shift premium when they returned to work for

1 an additional shift in the same day, after having been clocked out for several hours. For example,
2 Plaintiff would be scheduled to work a shift from 7:00 a.m. to 11:00 a.m. serving breakfast, then
3 would clock out for several hours before returning to work an evening shift starting at 4:00 p.m.
4 serving dinner. When this occurred, Defendants did not always pay Plaintiff and other non-
5 party Aggrieved Employees an additional hour at minimum wage.

6 119. Defendants' failure to provide Plaintiff and other non-party Aggrieved
7 Employees with split-shift pay when they returned to work for an additional shift in the same
8 day, after having been clocked out for more than an hour, violates California Labor Code section
9 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Plaintiff and other non-
10 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
11 Code sections 2699(a), (f), and (g).

12 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

13 **VIOLATION OF LABOR CODE SECTION 2802**

14 120. At all times herein set forth, California Labor Code section 2802 provides that
15 an employer must reimburse employees for all necessary expenditures and losses incurred by
16 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
17 to prevent employers from passing off their cost of doing business and operating expenses on
18 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
19 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools
20 or equipment are required by the employer or are necessary to the performance of a job, such
21 tools and equipment shall be provided and maintained by the employer, except that an employee
22 whose wages are at least two (2) times the minimum wage provided herein may be required to
23 provide and maintain hand tools and equipment customarily required by the trade or craft."
24 IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the
25 employer to be worn by the employee as a condition of employment, such uniforms shall be
26 provided and maintained by the employer."

27 121. First, during the relevant time period, Defendants, on a company-wide basis,
28 required that Plaintiff and other non-party Aggrieved Employees use their own personal mobile

1 devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job
2 duties, but failed to reimburse them for the costs of their work-related mobile device expenses.
3 For example, Plaintiff was required to use her personal cellular phone to respond to calls from
4 Defendants' managers to discuss work-related matters, such as cooking, cashiering, and
5 preparing food. Plaintiff spent 20 minutes per week using her personal cellular phone in connection
6 with carrying out her work duties. Although Defendants required Plaintiff and other non-party
7 Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out
8 their work-related responsibilities, Defendants failed to reimburse them for this cost.

9 122. Second, during the relevant time period, Defendants required Plaintiff and other
10 non-party Aggrieved Employees to report to work wearing clean uniforms bearing the Carl's Jr.
11 company logo, including three (3) uniform shirts and two (2) hats. However, Defendants failed
12 to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of
13 uniform items in relation to their scheduled shifts and for the tasks they were required to perform,
14 Plaintiff and other non-party Aggrieved Employees were forced to wash their uniforms more
15 frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the
16 nature of restaurant work, Plaintiff's and other non-party Aggrieved Employees' uniform items
17 would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that
18 they were unable to mix these clothes in with other laundry. As a result, Plaintiff had to wash
19 her uniform items separately from her regular clothing, thus incurring additional laundry
20 expenses for the upkeep of her uniforms. Defendants did not provide uniform laundering
21 services to Plaintiff and other non-party Aggrieved Employees and did not reimburse them for
22 the costs they incurred maintaining their uniforms. Instead, Defendants passed the cost of
23 maintaining employee uniforms on to Plaintiff and other non-party Aggrieved Employees.

24 123. Defendants could have provided Plaintiff and other non-party Aggrieved
25 Employees with the actual equipment for use on the job, such as company mobile devices, and
26 access to laundering services. Or, Defendants could have reimbursed employees for the costs
27 of their mobile device usage and laundering expenses or provided a uniform maintenance
28 allowance. Instead, Defendants passed these operating costs off onto Plaintiff and other non-

1 party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times
2 the minimum wage.

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

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury.

10 **PRAYER FOR RELIEF**

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

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

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

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

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, and 2802;

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, and 2802;

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

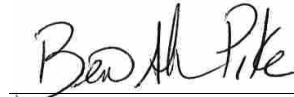
9 6. For such other and further relief as the Court may deem equitable and
10 appropriate.

11
12 Dated: May 15, 2023,

Respectfully submitted,

Capstone Law APC

13
14
15 By:



Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

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17 Attorneys for Plaintiff Denise Ortiz Amezcua
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EXHIBIT “1”

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

March 10, 2023

VIA ONLINE SUBMISSION

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

Subject: *Denise Ortiz Amezcua v. Restaurants Del Sur, LLC, et al.*

Dear PAGA Administrator:

This office represents Denise Ortiz Amezcua in connection with her claims under the California Labor Code. Ms. Ortiz Amezcua was an employee of RESTAURANTS DEL SUR, LLC; M & N FOODS, LLC; and/or SDC RESTAURANTS LLC. For the purpose of this letter, Ms. Ortiz Amezcua collectively refers to these entities as “DEL SUR.”

The employers may be contacted directly at the addresses below:

RESTAURANTS DEL SUR, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

M & N FOODS, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

SDC RESTAURANTS LLC
112 LOS GATOS BLVD
LOS GATOS, CA 95030

Ms. Ortiz Amezcua intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Ortiz Amezcua seeks relief on behalf of herself, the State of California, and other persons who are or were employed by DEL SUR 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.

DEL SUR employed Ms. Ortiz Amezcua as an hourly paid, non-exempt employee from approximately September 2021 to October 2022. Ms. Ortiz Amezcua worked for DEL SUR as a Crew Person, Cashier, and Shift Leader Trainee at its Carl’s Jr. restaurant location at 1100 Broadway in Chula Vista, California. During her employment, Ms. Ortiz Amezcua typically worked four (4) to seven (7) hours per day, five (5) days per or more week. Ms. Ortiz Amezcua was compensated

approximately \$15.00 per hour at the time her employment ended with DEL SUR. Her job duties included, without limitation, cashiering, cooking, cleaning, monitoring employee work assignments, and accounting for register funds.

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

DEL SUR’s Company-Wide and Uniform Payroll and HR Practices

RESTAURANTS DEL SUR, LLC; M & N FOODS, LLC; and SDC RESTAURANTS LLC are California limited liability companies. Together, they operate approximately 55 Carl’s Jr. restaurant franchise locations throughout California. Upon information and belief, DEL SUR maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for DEL SUR in California, including Ms. Ortiz Amezcua and other aggrieved employees. At all relevant times, DEL SUR issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Ortiz Amezcua and other aggrieved employees, regardless of its location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in 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.

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

DEL SUR willfully failed to pay all overtime wages owed to Ms. Ortiz Amezcua and other aggrieved employees. During the relevant time period, Ms. Ortiz Amezcua 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 time period, DEL SUR had a company-wide policy and/or practice of requiring Ms. Ortiz Amezcua and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, because DEL SUR's company-wide timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. Ortiz Amezcua and other aggrieved employees would often have to wait three (3) or more minutes to clock in, because other employees were using the POS system to handle customer transactions. As a further example, twice per week, DEL SUR's management instructed Ms. Ortiz Amezcua to perform restaurant opening and closing tasks, such as unlocking or locking doors, disarming or setting the alarm, and turning on or shutting off the lights, but DEL SUR did not compensate her for this time.

Moreover, other aggrieved employees would clock out at the end of their shifts and wait for five (5) minutes off-the-clock for management to perform closing duties, before they were permitted to exit the restaurant. As a result of these policies and/or practices, other aggrieved employees were subject to DEL SUR's control after they had completed their shifts, but were not compensated for this time. Additionally, Ms. Ortiz Amezcua and other aggrieved employees were required to respond to their personal mobile devices and complete other work-related tasks outside their scheduled shifts. For example, twice per week while off-the-clock, Ms. Ortiz Amezcua was required to respond to phone calls regarding cashiering, cooking, preparing food, and other work assignments for 10 minutes per instance. Thus, DEL SUR failed to track this time spent working before, after, and outside scheduled shifts, and Ms. Ortiz Amezcua and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, DEL SUR had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. DEL SUR's use of labor budgets, combined with heavy workloads, resulted in understaffing and a failure to provide Ms. Ortiz Amezcua and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. Moreover, DEL SUR had a company-wide practice of failing to schedule meal periods, which caused Ms. Ortiz Amezcua and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Ms. Ortiz Amezcua 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, approximately twice per week, Ms. Ortiz Amezcua would have her meal periods interrupted and/or shortened to assist with or respond to questions regarding food preparation and cashiering. Consequently, Ms. Ortiz Amezcua and other aggrieved employees worked through and/or had their unpaid meal periods interrupted to complete their assigned workloads.

Further, on information and belief, because DEL SUR frowned upon employees accruing meal period penalties, DEL SUR pressured Ms. Ortiz Amezcua and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that DEL SUR would otherwise owe. Furthermore, DEL SUR's company-wide timekeeping system prevented Ms. Ortiz Amezcua

and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Ortiz Amezcua and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal periods before 30 minutes had elapsed. Thus, DEL SUR did not record all hours worked during meal periods and Ms. Ortiz Amezcua and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, DEL SUR did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DEL SUR paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DEL SUR 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, DEL SUR failed to pay all overtime wages by paying a lower overtime rate than required.

DEL SUR's failure to pay Ms. Ortiz Amezcua and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Ortiz Amezcua 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 above, DEL SUR required Ms. Ortiz Amezcua and other aggrieved employees to work off-the-clock, including, but not limited to, waiting to clock in; performing opening and closing restaurant duties such as unlocking or locking doors, disarming or setting the alarm, and turning on or shutting the lights off; waiting for management to perform closing duties; and responding to communications on their personal mobile devices. DEL SUR failed to track this time Ms. Ortiz Amezcua and other aggrieved employees spent working off-the-clock, and thus, Ms. Ortiz Amezcua and other aggrieved employees received no compensation for this time.

Also, as set forth above, due to DEL SUR's company-wide policies and/or practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Ortiz Amezcua and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and/or were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, DEL SUR's management pressured Ms. Ortiz Amezcua and other aggrieved employees to clock out for meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, during the relevant time period, DEL SUR systematically failed to pay Ms. Ortiz Amezcua and other aggrieved employees for actual hours worked during unpaid meal periods, because DEL SUR's timekeeping system locked out Ms. Ortiz Amezcua and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, DEL SUR systematically failed to pay Ms. Ortiz Amezcua and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

were interrupted twice per week and cut short, in order to respond to questions regarding preparing food and cashiering. Thus, Ms. Ortiz Amezcua and other aggrieved employees missed their meal periods entirely, had their meal periods cut short to return to work, and/or waited extended periods of time before taking meal periods.

Furthermore, as stated, because DEL SUR frowned upon employees accruing meal period penalties, DEL SUR's management pressured Ms. Ortiz Amezcua and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by DEL SUR. For example, Ms. Ortiz Amezcua was required to clock out for her meal period to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods. Also, as stated, DEL SUR's company-wide timekeeping system prevented Ms. Ortiz Amezcua and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Ortiz Amezcua and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had lapsed.

As a result, Ms. Ortiz Amezcua and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Ms. Ortiz Amezcua missed her meal periods altogether and/or had her meal periods interrupted or cut short because the restaurant was severely understaffed, and employees were forced to work through or return early from meal periods in order to continue their duties. Additionally, Ms. Ortiz Amezcua frequently took her meal periods late, after the end of her fifth hour of work, in order to fulfill her kitchen duties such as cooking, preparing orders, and cashiering.

Moreover, DEL SUR did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Ortiz Amezcua 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.

Furthermore, DEL SUR had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. DEL SUR took the position that non-exempt, hourly paid employees had waived their rights to first 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. DEL SUR's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, due to blanket meal period waivers signed at or near the time of hire, discouraged and impeded Ms. Ortiz Amezcua 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 DEL SUR required Ms. Ortiz Amezcua and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because DEL SUR's obligation to provide Ms. Ortiz Amezcua and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times mentioned herein, DEL SUR knew or should have known that as a result of its company-wide policies and/or practices, Ms. Ortiz Amezcua and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DEL SUR further knew or should have known that it did not pay Ms. Ortiz Amezcua and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted.

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

Moreover, DEL SUR maintained a company-wide on-premises rest period policy, which mandated that Ms. Ortiz Amezcua and other aggrieved employees remain on DEL SUR's premises during their rest periods. Because Ms. Ortiz Amezcua and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, DEL SUR effectively maintained control over Ms. Ortiz Amezcua and other aggrieved employees during rest periods.

As a result of DEL SUR's practices and policies, Ms. Ortiz Amezcua and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Ortiz Amezcua had to forego her second rest periods entirely to meet customer demands due to a lack of rest period coverage.

DEL SUR 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, Ms. Ortiz Amezcua and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DEL SUR did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, DEL SUR did not pay other aggrieved employees at the correct rate of pay for premiums because DEL SUR 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, DEL SUR failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Ortiz Amezcua 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. DEL SUR has not provided Ms. Ortiz Amezcua 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, DEL SUR has knowingly and intentionally provided Ms. Ortiz Amezcua and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DEL SUR issued uniform wage statements to Ms. Ortiz Amezcua and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, DEL SUR violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DEL SUR did not record the time Ms. Ortiz Amezcua 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), DEL SUR did not list the correct amount of gross wages and net wages earned by Ms. Ortiz Amezcua and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DEL SUR failed to accurately list the total number of hours worked by Ms. Ortiz Amezcua and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because DEL SUR did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, DEL SUR 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). DEL SUR also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." 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), DEL SUR willfully failed to maintain accurate payroll records for Ms. Ortiz Amezcua 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, DEL SUR engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying 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 work period and meal period start and end times for Ms. Ortiz Amezcua and other aggrieved employees in violation of section 1198. Furthermore, in light of DEL SUR’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, DEL SUR kept no records of meal start and end times for second meal periods.

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

Ms. Ortiz Amezcua 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, DEL SUR failed to pay Ms. Ortiz Amezcua and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

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

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

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

On information and belief, DEL SUR has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Ortiz Amezcua was terminated over the phone on October 11, 2022; however, she did not receive all of her final wages until approximately October 20, 2022. Thus, DEL SUR failed to pay Ms. Ortiz Amezcua her final wages immediately, in violation of California Labor Code section 201.

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

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

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

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

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

DEL SUR had a company-wide practice of sending Ms. Ortiz Amezcua and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Ortiz Amezcua and other aggrieved employees for half of their usual or scheduled shift. For example, when scheduled to work an eight (8) hour shift, Ms. Ortiz Amezcua was sent home before three (3) hours had elapsed because business was slow, but was only paid for the time she worked. Although Ms. Ortiz Amezcua and other aggrieved employees would report to work based on the schedule that DEL SUR provided to them, DEL SUR would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

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

Ms. Ortiz Amezcua 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 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.”

DEL SUR willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because DEL SUR failed to pay Ms. Ortiz Amezcua 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 four (4) hours. For example, Ms. Ortiz Amezcua would be scheduled to work a morning shift from 7:00 a.m. to 11:00 a.m. serving breakfast, then would clock out for several hours before returning to work an evening shift starting at 4:00 p.m. serving dinner. When this occurred, DEL SUR did not always pay Ms. Ortiz Amezcua and other aggrieved employees an additional hour at minimum wage. Accordingly, DEL SUR required Ms. Ortiz Amezcua and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

DEL SUR's failure to provide Ms. Ortiz Amezcua 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 several hours, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Ms. Ortiz Amezcua and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 5-2001 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, DEL SUR, on a company-wide basis, required that Ms. Ortiz Amezcua and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Ortiz Amezcua was required to use her personal cellular phone to respond to calls from DEL SUR’s managers to discuss work-related matters, such as cooking, cashiering, and preparing food. Ms. Ortiz Amezcua spent about 20 minutes per week using her personal cellular phone in connection with carrying out her work duties. Although DEL SUR required Ms. Ortiz Amezcua and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, DEL SUR failed to reimburse them for these costs.

Second, during the relevant time period, DEL SUR required Ms. Ortiz Amezcua and other aggrieved employees to wear uniforms bearing the Carl’s Jr. company logo, including three (3) uniform t-shirts and two (2) hats. However, DEL SUR failed to provide Ms. Ortiz Amezcua and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Ortiz Amezcua and other aggrieved employees were forced to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Ortiz Amezcua’s and other aggrieved employees’ uniforms would become stained with grease, sweat, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, Ms. Ortiz Amezcua had to wash her uniform items separately from her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniforms. Thus, DEL SUR failed to maintain uniforms it required Ms. Ortiz Amezcua and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

DEL SUR could have provided Ms. Ortiz Amezcua and other aggrieved employees with the actual tools for use on the job, such as company mobile devices, as well as an adequate number of uniform items or access to laundering services. Or, DEL SUR could have reimbursed employees for the costs of their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, DEL SUR passed these operating costs off onto Ms. Ortiz Amezcua and other aggrieved employees. At all relevant times, Ms. Ortiz Amezcua did not earn at least two (2) times the minimum wage.

Thus, DEL SUR had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Ortiz Amezcua 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." DEL SUR, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Ortiz Amezcua's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Ortiz Amezcua seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Ortiz Amezcua, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against DEL SUR 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, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Ortiz Amezcua 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 Ms. Ortiz Amezcua's reasonable attempt to settle her dispute with DEL SUR prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform DEL SUR of Ms. Ortiz Amezcua's aforementioned grievances and the proposed remedies as detailed below, while affording DEL SUR a reasonable opportunity to satisfy Ms. Ortiz Amezcua's demands.

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

1. DEL SUR shall pay Ms. Ortiz Amezcua and all other aggrieved employees employed by DEL SUR at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. DEL SUR 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, provided lawful meal and rest periods, and paid all reporting time pay.

3. DEL SUR shall conduct a survey or interview all current and former aggrieved employees in California who worked for DEL SUR 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 mobile device expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. DEL SUR 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. DEL SUR 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. DEL SUR shall pay accrued legal interest to Ms. Ortiz Amezcua and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
6. DEL SUR shall provide Ms. Ortiz Amezcua and all aggrieved employees employed by DEL SUR 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).
7. DEL SUR shall pay waiting time penalties, equal to 30 days of pay, to Ms. Ortiz Amezcua and each former aggrieved employee who was not paid all wages due as described herein.
8. DEL SUR shall provide all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
9. DEL SUR shall pay Ms. Ortiz Amezcua and all 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, as required by California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C).
10. DEL SUR shall reimburse Ms. Ortiz Amezcua and all aggrieved employees who were required to pay for any business expenses incurred for DEL SUR's benefit, including, but not limited to, mobile device usage, laundering expenses, and other expenditures, as required by Labor Code section 2802.
11. DEL SUR 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 IWC 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: RESTAURANTS DEL SUR, LLC (via U.S. Certified Mail); M & N FOODS, LLC (via U.S. Certified Mail); SDC RESTAURANTS LLC (via U.S. Certified Mail)

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



7022 2410 0000 2405 7606

RESTAURANTS DEL SUR, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

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- Print your name and address on the reverse
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RESTAURANTS DEL SUR, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660



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

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RESTAURANTS DEL SUR, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

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

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7022 2410 0000 2405 7613

M & N FOODS, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

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- Print your name and address on the reverse so that we can return the card to you.

M & N FOODS, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

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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



9590 9402 7690 2122 7173 72

2. Article Number (Transfer from service label)

7022 2410 0000 2405 7613

- 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

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

Domestic Return Receipt

7022 2410 0000 2405 7613

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (attach fee, and fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Restricted Mail (signature) \$

DELIVERED
RES. REC. SENT
Postmark

M & N FOODS, LLC
50 BRAEBURN LANE
NEWPORT BEACH, CA 92660

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



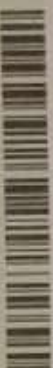
7022 2410 0000 2405 7620

SDC RESTAURANTS LLC
112 LOS GATOS BLVD,
LOS GATOS, CA 95030

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.

SDC RESTAURANTS LLC
112 LOS GATOS BLVD,
LOS GATOS, CA 95030



9590 9402 7690 2122 7173 58

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7620

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

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

Domestic Return Receipt

Domestic Return Receipt

U.S. Postal Service®
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

CERTIFY AND SIGN

Postage & Fees, amount due, and tax or surcharge
☐ Return Receipt (hardcopy) ☐ Return Receipt (electronic)
Postage & Fees: \$ _____
Tax or Surcharge: \$ _____
Total: \$ _____

RECEIVED
Postmark
Date

SDC RESTAURANTS LLC
112 LOS GATOS BLVD,
LOS GATOS, CA 95030

7022 2410 0000 2405 7620

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you.		A. Signature X <i>Michael Borchard</i> ☐ Agent ☐ Addressee	
RESTAURANTS DEL SUR, LLC 50 BRAEBURN LANE NEWPORT BEACH, CA 92660		3. Received by (Printed Name) <i>Michael Borchard</i>	C. Date of Delivery
2. Article Number (Transfer from service label) 7022 2410 0000 2405 7606		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
Barcode: 9590 9402 7690 2122 7173 65		E. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you.		A. Signature X <i>Michael Borchard</i> ☐ Agent ☐ Addressee	
M & N FOODS, LLC 50 BRAEBURN LANE NEWPORT BEACH, CA 92660		B. Received by (Printed Name) <i>Michael Borchard</i>	C. Date of Delivery
2. Article Number (Transfer from service label) 7022 2410 0000 2405 7613		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
Barcode: 9590 9402 7690 2122 7173 72		E. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	