

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 5/17/2023 9:28 AM
Reviewed By: R. Walker
Case #23CV411280
Envelope: 11993822**

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

RYAN BLAKE, individually, and on behalf
of other members of the general public
similarly situated, and as an aggrieved
employee pursuant to the Private Attorneys
General Act (“PAGA”),

Plaintiff,

vs.

OLD CROW SMOKEHOUSE ORANGE,
LLC dba SAUCED BBQ & SPIRITS, a
California limited liability company;
SAUCED BBQ & SPIRITS WALNUT
CREEK, L.P., a California limited
partnership; SAUCED BBQ & SPIRITS
SACRAMENTO, L.P., a California limited
partnership; SAUCED BBQ & SPIRITS
SANTANA ROW, LP, a California limited
partnership; SAUCED BBQ & SPIRITS
LIVERMORE, LLC, a California limited
liability company; SAUCED BBQ &
SPIRITS EL SEGUNDO, LP, a California
limited partnership; PLUCKED, LLC, a
California limited liability company; FAT
CHANCE ENTERTAINMENT, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 23CV411280

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to

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- Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
 - (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
 - (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
 - (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Ryan Blake, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the
5 County of Santa Clara, and have violated the requirements of the California Labor Code and
6 applicable IWC Wage Order in this county which give rise to the penalties sought in this
7 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
8 the California Labor Code and applicable IWC Wage Order in at least one location within the
9 County of Santa Clara, including Defendants' restaurant location in San Jose (3055 Olin
10 Avenue, #1005, San Jose, California 95128). Pursuant to California Civil Code of Procedure
11 section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in
12 the county in which the cause, or some part of the cause, arose. Because Defendants have
13 employees in Santa Clara County and Plaintiff could bring this action to recover penalties in
14 Santa Clara County, venue is proper.

15 THE PARTIES

16 4. Plaintiff Ryan Blake is a resident of Fullerton, California. Defendants
17 employed Plaintiff as an hourly paid, non-exempt Line Cook from approximately July 2022 to
18 October or November 2022. Plaintiff worked for Defendants at their Sauced BBQ & Spirits
19 restaurant location in Orange, California. During his employment, Plaintiff typically worked
20 six (6) to eight (8) hours per day, and three (3) to five (5) days per week. Plaintiff's primary
21 job duties included, without limitation, preparing and cooking food, stocking ingredients, and
22 cleaning.

23 5. OLD CROW SMOKEHOUSE ORANGE, LLC was and is, upon information
24 and belief, a California limited liability company, and at all times hereinafter mentioned, an
25 employer whose employees are engaged throughout this county and the State of California.

26 6. SAUCED BBQ & SPIRITS WALNUT CREEK, L.P. was and is, upon
27 information and belief, a California limited partnership, and at all times hereinafter
28 mentioned, an employer whose employees are engaged throughout this county and the State of

1 California.

2 7. SAUCED BBQ & SPIRITS SACRAMENTO, L.P. was and is, upon
3 information and belief, a California limited partnership, and at all times hereinafter
4 mentioned, an employer whose employees are engaged throughout this county and the State of
5 California.

6 8. SAUCED BBQ & SPIRITS SANTANA ROW, LP was and is, upon
7 information and belief, a California limited partnership, and at all times hereinafter
8 mentioned, an employer whose employees are engaged throughout this county and the State of
9 California.

10 9. SAUCED BBQ & SPIRITS LIVERMORE, LLC was and is, upon information
11 and belief, a California limited liability company, and at all times hereinafter mentioned, an
12 employer whose employees are engaged throughout this county and the State of California.

13 10. SAUCED BBQ & SPIRITS EL SEGUNDO, LP was and is, upon information
14 and belief, a California limited partnership, and at all times hereinafter mentioned, an
15 employer whose employees are engaged throughout this county and the State of California.

16 11. PLUCKED, LLC was and is, upon information and belief, a California limited
17 liability company, and at all times hereinafter mentioned, an employer whose employees are
18 engaged throughout this county and the State of California.

19 12. FAT CHANCE ENTERTAINMENT, INC. was and is, upon information and
20 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
21 employees are engaged throughout this county and the State of California.

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

26 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
27 were the partners, agents, owners, or managers of Defendants at all relevant times.

28 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, OLD CROW
2 SMOKEHOUSE ORANGE, LLC; SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.;
3 SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ & SPIRITS SANTANA
4 ROW, LP; SAUCED BBQ & SPIRITS LIVERMORE, LLC; SAUCED BBQ & SPIRITS EL
5 SEGUNDO, LP; PLUCKED, LLC; FAT CHANCE ENTERTAINMENT, INC.; and/or DOES
6 1 through 10 (collectively, “Defendants” or “SAUCED BBQ & SPIRITS”), each acting as the
7 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
8 other co-Defendants and was acting within the course and scope of such agency, employment,
9 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
10 of any and all Defendants were in accordance with, and represent, the official policy of
11 Defendants.

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

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

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

1 19. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
3 members because Defendants have:

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

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

22 21. OLD CROW SMOKEHOUSE ORANGE, LLC; SAUCED BBQ & SPIRITS
23 WALNUT CREEK, L.P.; SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ
24 & SPIRITS SANTANA ROW, LP; SAUCED BBQ & SPIRITS LIVERMORE, LLC;
25 SAUCED BBQ & SPIRITS EL SEGUNDO, LP; PLUCKED, LLC; FAT CHANCE
26 ENTERTAINMENT, INC.; and DOES 1 through 10 are therefore alter egos of each other.

27 22. Adherence to the fiction of the separate existence of Defendants would permit
28 an abuse of the corporate privilege, and would promote injustice by protecting Defendants

1 from liability for the wrongful acts committed by them under the name SAUCED BBQ &
2 SPIRITS.

3 23. Plaintiff further alleges, upon information and belief, that Defendants OLD
4 CROW SMOKEHOUSE ORANGE, LLC; SAUCED BBQ & SPIRITS WALNUT CREEK,
5 L.P.; SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ & SPIRITS
6 SANTANA ROW, LP; SAUCED BBQ & SPIRITS LIVERMORE, LLC; SAUCED BBQ &
7 SPIRITS EL SEGUNDO, LP; PLUCKED, LLC; and FAT CHANCE ENTERTAINMENT,
8 INC. are alter egos of each other for the following reasons:

- 9 (a) On the California Secretary of State's website
10 (<https://bizfileonline.sos.ca.gov/>), OLD CROW SMOKEHOUSE
11 ORANGE, LLC; SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.;
12 SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ &
13 SPIRITS SANTANA ROW, LP; SAUCED BBQ & SPIRITS
14 LIVERMORE, LLC; SAUCED BBQ & SPIRITS EL SEGUNDO, LP;
15 PLUCKED, LLC; and FAT CHANCE ENTERTAINMENT, INC. share
16 the same principal address and/or mailing address of "2300 FIRST ST.
17 STE 220, LIVERMORE, CA 94550";
- 18 (b) On the California Secretary of State's website, OLD CROW
19 SMOKEHOUSE ORANGE, LLC; SAUCED BBQ & SPIRITS
20 LIVERMORE, LLC; and FAT CHANCE ENTERTAINMENT, INC.
21 share the same agent for service of process, Barrett Gomes;
- 22 (c) On the California Secretary of State's website, SAUCED BBQ &
23 SPIRITS WALNUT CREEK, L.P.; SAUCED BBQ & SPIRITS
24 SACRAMENTO, L.P.; SAUCED BBQ & SPIRITS SANTANA ROW,
25 LP; SAUCED BBQ & SPIRITS EL SEGUNDO, LP; and PLUCKED,
26 LLC share the same agent for service of process, Michael T. Krueger;
- 27 (d) According to Statement of Information forms filed with the California
28 Secretary of State, FAT CHANCE ENTERTAINMENT, INC. is a

1 general partner of SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.;
2 SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ &
3 SPIRITS SANTANA ROW, LP; and SAUCED BBQ & SPIRITS EL
4 SEGUNDO, LP; and a manager and/or member of OLD CROW
5 SMOKEHOUSE ORANGE, LLC and SAUCED BBQ & SPIRITS
6 LIVERMORE, LLC; and

7 (e) On information and belief, OLD CROW SMOKEHOUSE ORANGE,
8 LLC; SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.; SAUCED
9 BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ & SPIRITS
10 SANTANA ROW, LP; SAUCED BBQ & SPIRITS LIVERMORE,
11 LLC; SAUCED BBQ & SPIRITS EL SEGUNDO, LP; PLUCKED,
12 LLC; and FAT CHANCE ENTERTAINMENT, INC. utilize the same
13 standardized employment forms and issue the same employment
14 policies.

15 **GENERAL ALLEGATIONS**

16 24. Defendants own and operate approximately 10 “Sauced BBQ & Spirits” and
17 “Plucked” restaurant locations throughout California. Upon information and belief,
18 Defendants maintain a single, centralized Human Resources (“HR”) department at their
19 corporate headquarters in Livermore, California, which is responsible for the recruiting and
20 hiring of new employees, and communicating and implementing Defendants’ company-wide
21 policies, including timekeeping policies and meal and rest period policies, to employees
22 throughout California.

23 25. In particular, Plaintiff and class members, on information and belief, received
24 the same standardized documents and/or written policies. Upon information and belief, the
25 usage of standardized documents and/or written policies, including new-hire documents,
26 indicate that Defendants dictated policies at the corporate level and implemented them
27 company-wide, regardless of their employees’ assigned locations or positions.

28 26. Upon information and belief, Defendants maintain a centralized Payroll

1 department at their corporate headquarters in Livermore, California, which processes payroll
2 for all non-exempt, hourly paid employees working for Defendants at their various locations
3 in California, including Plaintiff and class members. Based upon information and belief,
4 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
5 employees in California, irrespective of their work locations. Upon information and belief,
6 Defendants process payroll for departing employees in the same manner throughout the State
7 of California, regardless of the manner in which each employee's employment ends.

8 27. Defendants continue to employ non-exempt or hourly paid employees in
9 California.

10 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
12 and advisors knowledgeable about California labor and wage law, employment and personnel
13 practices, and about the requirements of California law.

14 29. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
15 members were not paid for all hours worked because all hours worked were not recorded.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to receive certain wages for
18 overtime compensation and that they were not receiving certain wages for overtime
19 compensation.

20 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive at least minimum
22 wages for compensation and that they were not receiving at least minimum wages for work
23 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
24 and class members were not paid at least minimum wages for work done off-the-clock.

25 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to meal periods in
27 accordance with the California Labor Code or payment of one (1) additional hour of pay at
28 their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)

1 minute meal periods and that Plaintiff and class members were not provided with all meal
2 periods or payment of one (1) additional hour of pay at their regular rates of pay when they
3 did not receive a timely, uninterrupted, thirty (30) minute meal period.

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

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

18 35. 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 California Labor Code and applicable IWC Wage Order, but willfully,
21 knowingly, and intentionally failed to do so.

22 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to timely payment of all
24 wages earned upon termination of employment. In violation of the California Labor Code,
25 Plaintiff and class members did not receive payment of all wages due, including, but not
26 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting
27 time pay, within permissible time periods.

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

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

6 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that they were not permitted to compel or coerce Plaintiff and class
8 members to patronize their business in the purchase of anything of value, but did in fact
9 require Plaintiff and class members to purchase various items, including uniform items, from
10 Defendants.

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

17 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
19 were entitled to sit when it did not interfere with the performance of their duties and also have
20 seats nearby to use during a lull in tasks that do require moving about or standing. In
21 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
22 provide Plaintiff and/or class members with suitable seating.

23 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive full
25 reimbursement for all business-related expenses and costs they incurred during the course and
26 scope of their employment and that they did not receive full reimbursement of applicable
27 business-related expenses and costs incurred.

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

mentioned, Defendants knew or should have known that Defendants had a duty to provide Plaintiff and class members with written notice of the material terms of their employment with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

43. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged
2 violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(a) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

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

14 48. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
15 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
16 provision other than those listed in Section 2699.5 after the following requirements have been
17 met:

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

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

26 (c) The employer may cure the alleged violation within thirty-three (33)
27 calendar days of the postmark date of the notice sent by the aggrieved
28 employee or representative. The employer shall give written notice

1 within that period of time by certified mail to the aggrieved employee or
2 representative and by online filing with the LWDA if the alleged
3 violation is cured, including a description of actions taken, and no civil
4 action pursuant to Section 2699 may commence. If the alleged violation
5 is not cured within the 33-day period, the aggrieved employee may
6 commence a civil action pursuant to Section 2699.

7 49. On March 9, 2023, Plaintiff provided written notice by online filing to the
8 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
9 Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
11 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
12 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
13 Plaintiff PAGA Case Number LWDA-CM-941062-23. A true and correct copy of Plaintiff's
14 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

18 51. Thus, Plaintiff has satisfied the administrative prerequisites under California
19 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
20 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 450, 510, 512(a),
21 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

53. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

57. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

58. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

59. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

60. Members of the Class and Subclass are referred to herein as “class members.”

1 61. Plaintiff reserves the right to redefine the Class and Subclass and to add
2 additional subclasses as appropriate based on further investigation, discovery, and specific
3 theories of liability.

4 62. There are common questions of law and fact as to class members that
5 predominate over questions affecting only individual members, including, but not limited to:

- 6 (a) Whether Defendants required Plaintiff and class members to work over
7 eight (8) hours per day, over twelve (12) hours per day, or over forty
8 (40) hours per week and failed to pay all legally required overtime
9 compensation to Plaintiff and class members;
- 10 (b) Whether Defendants failed to pay Plaintiff and class members at least
11 minimum wages for all hours worked;
- 12 (c) Whether Defendants failed to provide Plaintiff and class members meal
13 periods;
- 14 (d) Whether Defendants failed to authorize and permit Plaintiff and class
15 members to take rest periods;
- 16 (e) Whether Defendants provided Plaintiff and class members with
17 complete and accurate wage statements as required by California Labor
18 Code section 226(a);
- 19 (f) Whether Defendants maintained accurate payroll records as required by
20 California Labor Code section 1174(d);
- 21 (g) Whether Defendants failed to pay earned overtime wages, minimum
22 wages, meal and rest period premiums, and/or reporting time pay due to
23 Plaintiff and class members upon their discharge;
- 24 (h) Whether Defendants failed to timely pay overtime wages, minimum
25 wages, meal and rest period premiums, and/or reporting time pay to
26 Plaintiff and class members during their employment;
- 27 (i) Whether Defendants compelled and/or coerced Plaintiff and class
28 members to patronize their business;

- 1 (j) Whether Defendants required Plaintiff and class members to report to
2 work, but failed to provide them with work or provided them with less
3 than half their usual or scheduled day's work, without properly
4 compensating them as required by California Code of Regulations, Title
5 8, section 11050(5);
- 6 (k) Whether Defendants failed to provide Plaintiff and/or class members
7 with suitable seating;
- 8 (l) Whether Defendants failed to reimburse Plaintiff and class members for
9 necessary and required business-related expenditures and/or losses
10 incurred by them in the scope of their employment;
- 11 (m) Whether Defendants failed to provide written notice of information
12 material to Plaintiff's and class members' employment with Defendants;
- 13 (n) Whether Defendants engaged in unlawful and unfair business practices
14 in violation of California Business & Professions Code sections 17200,
15 *et seq.*; and
- 16 (o) The appropriate amount of damages, restitution, or monetary penalties
17 resulting from Defendants' violations of California law.

18 63. There is a well-defined community of interest in the litigation and the class
19 members are readily ascertainable:

- 20 (a) Numerosity: The class members are so numerous that joinder of all
21 members would be unfeasible and impractical. The membership of the
22 entire class is unknown to Plaintiff at this time; however, the class is
23 estimated to be greater than one hundred (100) individuals and the
24 identity of such membership is readily ascertainable by inspection of
25 Defendants' employment records.
- 26 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
27 protect the interests of each class member with whom he has a well-
28 defined community of interest, and Plaintiff's claims (or defenses, if

any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

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

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

15 67. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

20 68. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
22 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
23 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
24 employee, including nondiscretionary bonuses and incentive pay.

25 69. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 70. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 71. First, Defendants had, and continue to have, a company-wide policy of
9 circumventing the payment of overtime wages to minimize labor costs. For example,
10 Defendants implemented a policy that moved time worked over eight (8) hours to different
11 days to reduce or eliminate overtime wages they would otherwise be required to pay.
12 Specifically, when Plaintiff and class members worked closing shifts on weekends,
13 Defendants counted time worked after eight (8) hours toward the next day and therefore
14 treated any overtime extending into the following day as two (2) separate shifts, so Plaintiff
15 and class members were not paid overtime premiums for all of the hours they worked in
16 excess of eight (8) hours in a day. For example, according to Defendants' time records,
17 Plaintiff worked an 8.15-hour shift that began on July 22, 2022, at 4:00 p.m. and ended on
18 July 23, 2022, at 12:41 a.m., but Defendants moved the time worked from 12:32 a.m. to 12:41
19 a.m. to a separate shift on July 23, 2022. Plaintiff should have been paid 8 hours of straight-
20 time, and 0.15 hours of time-and-a-half, but instead, on information and belief, Defendants
21 only paid him 8.15 hours of straight-time for that shift. As another example, on July 30, 2022,
22 Plaintiff worked an 8.22-hour shift that began at 4:01 p.m. and ended at 12:47 a.m., but
23 Defendants applied the time worked from 12:34 a.m. to 12:47 a.m. to the shift Plaintiff later
24 worked on July 31, 2022, from 5:48 p.m. to 11:40 p.m. Thus, on information and belief,
25 Defendants paid Plaintiff 8.00 hours of straight time for July 30th and 6.09 hours of straight
26 time for July 31st when he should have been paid 8.00 hours of straight time plus 0.22 hours
27 of time-and-a-half for July 30th and 5.87 hours of straight time for July 31st.

28 72. Second, Defendants had, and continue to have, a company-wide policy and/or

1 practice requiring Plaintiff and class members to perform various work-related tasks while
2 off-the-clock before and after their shifts. For example, because Defendants' timekeeping
3 system was integrated with the company's point-of-sale ("POS") system, Plaintiff and class
4 members would often have to wait to clock in for the start of their shifts, because other
5 employees were using the POS system to handle customer transactions and input food orders
6 for preparation. For instance, Plaintiff was required to wait several minutes under
7 Defendants' control until a POS machine was available for clocking-in, time for which he was
8 not paid. Additionally, Defendants required Plaintiff and class members to work off-the-clock
9 after their scheduled shifts ended. For example, Plaintiff spent approximately 30 minutes and
10 up to one (1) hour cleaning the kitchen after clocking out because management frowned upon
11 employees accruing overtime. Further, Defendants' management would request that Plaintiff
12 come into the office after he had already clocked out for the day to discuss work-related
13 matters for up to 30 minutes at a time. Thus, Defendants failed to track all of the time that
14 employees spent performing work-related tasks outside of their shifts, and Plaintiff and class
15 members received no compensation for this time.

16 73. Third, on information and belief, Defendants had, and continue to have, a
17 company-wide policy and/or practice of strictly staffing their restaurant locations based on the
18 labor hours allocated by each location's labor or payroll budget set by corporate. Defendants'
19 uniform use of labor budgets has resulted in chronic understaffing and a lack of adequate meal
20 period coverage, because there were too few employees on duty to handle the workload and
21 attend to customers. Because Defendants did not employ or staff a sufficient number of
22 employees to meet customer demand, there was no one available to relieve employees needing
23 meal period coverage, and Plaintiff and class members were not always afforded uninterrupted
24 30-minute meal periods during shifts when they were entitled to receive a meal period.
25 Moreover, Defendants have a practice of failing to schedule meal periods, which further
26 caused Plaintiff and class members to not be relieved of their duties for compliant meal
27 periods. Consequently, Plaintiff and class members were required to work through and/or had
28 their unpaid meal periods interrupted in order to complete their assigned duties and handle

1 customer demand, time for which they were not paid.

2 74. Fourth, Defendants' timekeeping system prevented Plaintiff and class members
3 from recording all hours worked when their meal periods were shortened or interrupted,
4 because the system locked out Plaintiff and class members once they clocked out for a meal
5 period, and would not permit them to clock back in from a meal period until 30 minutes had
6 elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and class members
7 from recording all hours worked when their meal periods were shortened or interrupted.

8 75. Furthermore, on information and belief, because Defendants frowned upon
9 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
10 class members to clock out for meal periods to reflect compliant meal periods, regardless of
11 whether they had received a compliant meal period or not, in order to strictly limit the meal
12 penalties that would need to be paid by Defendants. Thus, Defendants did not record all hours
13 worked during meal periods, and Plaintiff and class members performed work during meal
14 periods for which they were not paid.

15 76. Defendants knew or should have known that as a result of these company-wide
16 practices and/or policies, Plaintiff and class members were performing their assigned duties
17 off-the-clock before and after their shifts and during meal periods, and were suffered or
18 permitted to perform work for which they were not paid. Because Plaintiff and class members
19 sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more,
20 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and
21 class members were not paid overtime wages for all of the overtime hours they actually
22 worked.

23 77. Defendants' failure to pay Plaintiff and class members the balance of overtime
24 compensation as required by California law, violates the provisions of California Labor Code
25 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
26 members are entitled to recover from Defendants their unpaid overtime compensation, as well
27 as interest, costs, and attorneys' fees.

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SECOND CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, 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”).

80. First, as stated above, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to perform various work-related tasks while off-the-clock before and after their shifts, including waiting to clock in for the start of their shifts because other employees were using the POS system, cleaning and completing closing duties, and discussing work-related matters with management after clocking out. Thus, Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

81. Second, as set forth above, due to Defendants’ uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Plaintiff and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Furthermore, as set forth above, on information and belief, Defendants systematically failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods, because Defendants’ timekeeping system locked out Plaintiff and class members for 30 minutes when they clocked out for a meal period. Moreover, as stated,

1 in order to prevent employees from accruing meal period penalties, upon information and
2 belief, Defendants' management pressured employees to clock out for meal periods even
3 when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically
4 failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods
5 because these hours were not always correctly recorded.

6 82. Defendants did not pay minimum wages for all hours worked by Plaintiff and
7 class members. To the extent that these off-the-clock hours did not qualify for overtime
8 premium payment, Defendants did not pay at least minimum wages for those hours worked
9 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
10 1198.

11 83. Defendants' failure to pay Plaintiff and class members minimum wages violates
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
13 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
14 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
15 interest thereon.

16 **THIRD CAUSE OF ACTION**

17 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period** 18 **Violations** 19 **(Against all Defendants)**

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

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

1 86. At all relevant times herein set forth, California Labor Code sections 226.7,
2 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
3 meal period mandated by an applicable order of the IWC.

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

10 88. During the relevant time period, as stated above, Defendants had, and continue
11 to have, a company-wide policy and/or practice of understaffing their locations due to labor
12 budgeting and/or limited payroll allocation, which, combined with the assignment of heavy
13 workloads and a failure to schedule meal periods, has resulted in a lack of meal period
14 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal
15 periods to which they were entitled. As a result, Plaintiff and class members had to work
16 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
17 extended periods of time before taking meal periods. For example, Plaintiff was required to
18 work through his meal periods or could not take his meal periods until after five (5) hours into
19 his shifts, due to the heavy workload and lack of coverage. Thus, Defendants failed to provide
20 Plaintiff and class members with compliant, 30-minute meal periods.

21 89. Also, as stated, Defendants' company-wide timekeeping system prevented
22 Plaintiff and class members from recording all hours worked when their meal periods were
23 shortened or interrupted, because the system locked out Plaintiff and class members once they
24 clocked out for a meal period, and would not permit them to clock back in from a meal period
25 before 30 minutes had elapsed. For example, Plaintiff was unable to record when his meal
26 periods were interrupted or shortened by Defendants' management wanting to discuss work-
27 related matters and asking him questions during his meal periods.

28 90. Further, as set forth above, on information and belief, because Defendants

1 frowned upon employees accruing meal period penalties, Defendants' management pressured
2 employees to clock out for meal periods to reflect compliant meal periods, regardless of
3 whether they had received a compliant meal period or not, in order to strictly limit the meal
4 penalties that would need to be paid by Defendants.

5 91. At all times herein mentioned, Defendants knew or should have known that, as
6 a result of these policies, Plaintiff and class members were prevented from being relieved of
7 all duties and were required to perform some of their assigned duties during meal periods.
8 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
9 members all meal period premiums when meal periods were late, missed, shortened, or
10 interrupted.

11 92. Furthermore, Defendants engaged in a company-wide practice and/or policy of
12 not paying all meal period premiums owed when compliant meal periods were not provided.
13 Because of this practice and/or policy, Plaintiff and class members have not received all
14 premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to
15 provide Plaintiff and class members compliant meal periods in violation of California Labor
16 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

17 93. Defendants' conduct violates the applicable IWC Wage Order, and California
18 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
19 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
20 rate of compensation for each work day that the meal period was not provided.

21 **FOURTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 23 **(Against all Defendants)**

24 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
25 and every allegation set forth above.

26 95. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
28 members' employment by Defendants.

1 96. 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 97. 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
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
15 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
16 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
17 required rest period was not authorized and permitted.

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

27 99. Furthermore, upon information and belief, during the relevant time period,
28 Defendants maintained and implemented a company-wide on-premises rest period policy,

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

6 100. As a result of Defendants' practices and policies, Plaintiff and class members
7 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
8 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
9 throughout his employment, Plaintiff had to forego his rest periods entirely because the
10 restaurant was busy, did not have coverage, and there was an expectation for all employees to
11 work through their rest periods.

12 101. 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 class members have not
15 received premium pay for all missed rest periods.

16 102. Defendants' conduct violates the applicable IWC Wage Order and California
17 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
18 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
19 compensation for each work day that a compliant rest period was not authorized and
20 permitted.

21 **FIFTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 23 **Statements and Failure to Maintain Accurate Payroll Records** 24 **(Against all Defendants)**

25 103. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 104. At all relevant times herein set forth, California Labor Code section 226(a)
28 provides that every employer shall furnish each of his or her employees an accurate and

complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

105. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members 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 the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

106. Because Defendants did not accurately record the time Plaintiff and Subclass members 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), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

107. The wage statement deficiencies also include, without limitation, 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 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 hours worked off-the-clock.

108. California Labor Code section 1174(d) provides that “[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members 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.

109. 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. During the relevant time period, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198.

110. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

111. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 112. This cause of action is dependent upon, and wholly derivative of, the minimum
3 wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to
4 Plaintiff and those class members no longer employed by Defendants upon their termination.

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

12 114. Defendants willfully failed to pay Plaintiff and class members who are no
13 longer employed by Defendants the earned and unpaid wages set forth above, including but
14 not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or
15 reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their
16 leaving Defendants' employ.

17 115. Defendants' failure to pay Plaintiff and class members who are no longer
18 employed by Defendants their wages earned and unpaid at the time of discharge, or within
19 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
20 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
21 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
22 thirty (30) day maximum pursuant to California Labor Code section 203.

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
25 **Employment**
26 **(Against all Defendants)**

27 116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

117. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay that were not timely paid to Plaintiff and class members during their employment.

118. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

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

120. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

121. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**
3 **11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay**
4 **(Against all Defendants)**

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

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

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

23 125. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
25 Defendants failed to pay Plaintiff and class members reporting time pay when they reported to
26 work for their usual or scheduled shift but were put to work for less than half of their usual or
27 scheduled day’s work.

28 126. Defendants had a company-wide practice and/or policy of sending Plaintiff and

1 class members home early from their shifts, including before they had worked at least half of
2 their usual or scheduled shift, but would not pay Plaintiff and class members for half of their
3 scheduled shift. For example, a few times throughout his employment, when scheduled to
4 work a seven (7) hour shift, Defendants' managers sent Plaintiff home before he had an
5 opportunity to work at least half of his scheduled shift, but, on information and belief,
6 Plaintiff was only paid for the time he had worked. Although Plaintiff and class members
7 reported to work based on the schedule that was provided to them, Defendants would send
8 them home before they worked at least half of their usual or scheduled shifts. When this
9 occurred, Defendants did not pay Plaintiff and class members for at least half of their
10 scheduled day's work or the minimum reporting time pay.

11 127. Accordingly, Plaintiff and class members were not properly compensated with
12 reporting time pay in violation of California Labor Code section 1198 and California Code of
13 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled
14 to recover from Defendants unpaid wages and interest.

15 **NINTH CAUSE OF ACTION**

16 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 17 **(Against all Defendants)**

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

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

1 required to provide and maintain hand tools and equipment customarily required by the trade
2 or craft.” IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required
3 by the employer to be worn by the employee as a condition of employment, such uniforms
4 shall be provided and maintained by the employer.”

5 130. During the relevant time period, Defendants, on a company-wide basis,
6 required Plaintiff and class members to use their personal mobile devices, including, but not
7 limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
8 reimburse them for the costs of their work-related mobile device and/or mobile data expenses.
9 For example, Plaintiff was required to use his personal cellular phone to keep logs of food
10 temperatures, take photos for Defendants’ social media channels, and to check his work
11 schedules. Although Defendants required Plaintiff and class members to use their personal
12 mobile devices and mobile data to carry out their work-related duties, Defendants failed to
13 reimburse them for their costs incurred.

14 131. Additionally, during the relevant time period, Defendants expected Plaintiff and
15 class members to report to work in clean and presentable uniforms bearing the company logo,
16 including a shirt and a hat, but only provided Plaintiff and class members with one (1) shirt
17 and one (1) hat at the time of hire. Thus, Defendants failed to provide their employees with an
18 adequate number of uniforms in relation to their scheduled shifts and for the tasks they were
19 required to perform, forcing Plaintiff and class members to pay out-of-pocket for their
20 uniforms. For example, Plaintiff spent approximately \$90 out-of-pocket to purchase four (4)
21 shirts and one (1) hat from Defendants, but was not reimbursed for his costs.

22 132. Furthermore, on a company-wide basis, Defendants failed to provide Plaintiff
23 and class members with uniform cleaning services or reimburse them for cleaning expenses
24 incurred. For example, due to the nature of restaurant work, Plaintiff’s uniform items would
25 become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he
26 was unable to mix these clothes in with other laundry. As a result, Plaintiff had to wash his
27 uniform items more frequently than other clothing and/or separately from his regular clothing,
28 thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, Defendants

1 failed to provide and maintain uniforms they required Plaintiff and class members to wear
2 during their shifts and forced them to incur the costs of purchasing and maintaining employee
3 uniforms.

4 133. Defendants could have provided Plaintiff and class members with the actual
5 equipment for use on the job, such as company mobile devices and an adequate number of
6 uniform items or access to laundering services; or, Defendants could have reimbursed
7 employees for the costs of their mobile device usage and laundering expenses or provided a
8 uniform maintenance allowance. Instead, Defendants passed these operating costs off onto
9 Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times
10 the minimum wage.

11 134. Defendants' company-wide policy and/or practice of passing on their operating
12 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
13 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
14 business-related expenses and costs.

15 135. Plaintiff and class members are entitled to recover from Defendants their
16 business-related expenses incurred during the course and scope of their employment, plus
17 interest.

18 **TENTH CAUSE OF ACTION**

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

20 **(Against all Defendants)**

21 136. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 137. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
24 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
25 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
26 450, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
27 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
28 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and

1 2810.5.

2 138. Defendants' conduct, as alleged herein, violates numerous sections of the
3 California Labor Code, including, but not limited to, the following:

- 4 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
5 Wage Order for Defendants' failure to compensate Plaintiff and other
6 aggrieved employees with all required overtime pay, as alleged herein;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
8 1198, and the applicable IWC Wage Order for Defendants' failure to
9 compensate Plaintiff and other aggrieved employees with at least
10 minimum wages for all hours worked, as alleged herein;
- 11 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
13 and other aggrieved employees with meal periods, as alleged herein;
- 14 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
15 applicable IWC Wage Order for Defendants' failure to authorize and
16 permit Plaintiff and other aggrieved employees to take rest periods, as
17 alleged herein;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
22 IWC Wage Order for failure to maintain payroll records, as alleged
23 herein;
- 24 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
25 earned wages upon termination, as alleged herein;
- 26 (h) Violation of Labor Code section 204 for failure to pay all earned wages
27 during employment, as alleged herein;
- 28 (i) Violation of Labor Code section 450 for compelling Plaintiff and other

aggrieved employees to patronize Defendants' or any other person's business in the purchase of anything of value, as set forth below;

(j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to pay reporting time pay to Plaintiff and other aggrieved employees, as alleged herein;

(k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating, as set forth below;

(l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

(m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other aggrieved employees' employment with Defendants, as set forth below.

139. At all relevant times herein, California Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

140. As stated, Defendants had a company-wide policy of not providing a sufficient number of uniform items to Plaintiff and class members in relation to the shifts they were scheduled to work. During his employment, Plaintiff was scheduled to work five (5) days per week and Defendants provided him with only one (1) shirt and one (1) hat, forcing him to purchase additional shirts and hats from Defendants.

141. Defendants' conduct of compelling and/or coercing Plaintiff and other aggrieved employees to purchase goods from them violates California Labor Code section 450. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

142. At all relevant times herein, California Labor Code section 1198 makes it

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

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

9 144. Defendants’ California restaurants are generally similar in their layout and
10 design and there was, and continues to be, space behind host stands to allow for the presence
11 and use of a seat or stool by other aggrieved employees (with reasonable or no modification to
12 these work areas) during the performance of their work duties. Defendants could have
13 provided other aggrieved employees with a seat or stool at their host stands, but instead denied
14 employees seating and forced other aggrieved employees to stand throughout the day.

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

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

26 147. As a result of Defendants’ company-wide policy and/or practice of prohibiting
27 employees from sitting during their shifts and company-wide failure to provide suitable
28 seating, other aggrieved employees were forced to stand during shifts and denied seats.

1 Defendants' failure to provide suitable seating to other aggrieved employees violates
2 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).
3 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
4 Code sections 2699(a), (f), and (g).

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

10 149. During the relevant time period, Defendants violated California Labor Code
11 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
12 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were
13 they provided with suitable seats in reasonable proximity to their work areas.

14 150. Defendants' California restaurants are generally similar in their layout and
15 design and there was, and continues to be, space near their work areas (with reasonable or no
16 modification to these work areas) to allow for the presence and use of a seat or stool by other
17 aggrieved employees during lulls in operation. Defendants could have provided other
18 aggrieved employees with a seat or stool in their work areas, but instead denied, and continue
19 to deny, employees seating, forcing them to stand throughout the day.

20 151. Defendants did not provide other aggrieved employees with seats or stools in
21 reasonable proximity to their work areas to allow them to use seats when it would not interfere
22 with the performance of their duties for times when they were not engaged in active duties
23 that require standing. In other words, to the extent other aggrieved employees engaged in
24 duties in which the nature of the work required standing, Defendants denied them the use of
25 seats nearby during lulls in their work duties. Moreover, Defendants did not inform other
26 aggrieved employees of their rights to a seat or stool under California law.

27 152. As a result of Defendants' company-wide policy and/or practice of prohibiting
28 employees from sitting at any time, even when they were not engaged in active duties

1 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
2 work areas, other aggrieved employees were forced to stand during shifts and denied seats.
3 Defendants' failure to provide suitable seating to aggrieved employees violates California
4 Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B). Other
5 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
6 sections 2699(a), (f), and (g).

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

18 154. At all relevant times, on information and belief, Defendants failed, on a
19 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
20 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
21 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
22 basic information regarding their employment with Defendants is in violation of Labor Code
23 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **ELEVENTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

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

7 156. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 157. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
12 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
13 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 158. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 159. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
22 class members, to work overtime without paying them proper
23 compensation in violation of California Labor Code sections 510 and
24 1198, and the applicable IWC Wage Order, as alleged herein;
- 25 (b) Failing to pay at least minimum wage to Plaintiff and class members in
26 violation of California Labor Code sections 1182.12, 1194, 1197,
27 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
28 herein;

- 1 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
2 members in violation of California Labor Code sections 226.7, 512(a),
3 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (d) Failing to authorize and permit Plaintiff and class members to take
5 uninterrupted rest periods in violation of California Labor Code sections
6 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
7 herein;
- 8 (e) Failing to provide Plaintiff and class members with accurate wage
9 statements and failing to maintain accurate payroll records in violation
10 of California Labor Code sections 226(a), 1174(d), and 1198, and the
11 applicable IWC Wage Order, as alleged herein;
- 12 (f) Failing timely to pay all earned wages to Plaintiff and class members in
13 violation of California Labor Code section 204, as alleged herein;
- 14 (g) Compelling and/or coercing Plaintiff and class members to patronize
15 Defendants' business in violation of California Labor Code section 450,
16 as set forth below;
- 17 (h) Failing to pay reporting time pay in violation of California Labor Code
18 section 1198 and the applicable IWC Wage Order, as alleged herein;
- 19 (i) Failing to reimburse Plaintiff and class members for all business
20 expenses necessarily incurred in violation of California Labor Code
21 section 2802, as alleged herein; and
- 22 (j) Failing to provide written notice of information material to Plaintiff's
23 and class members' employment with Defendants in violation of
24 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

25 160. At all relevant times herein, California Labor Code section 450 provides that an
26 employer may not "compel or coerce any employee, or applicant for employment, to patronize
27 his or her employer, or any other person, in the purchase of anything of value." An employer
28 violates section 450 by forcing an employee to patronize the employer's business in the

1 purchase of a company-provided good.

2 161. As stated, Defendants had a company-wide policy of not providing a sufficient
3 number of uniform items to Plaintiff and class members in relation to the shifts they were
4 scheduled to work. During his employment, Plaintiff was scheduled to work five (5) days per
5 week and Defendants provided him with only one (1) shirt and one (1) hat, forcing him to
6 purchase additional shirts and hats from Defendants.

7 162. Defendants' conduct of compelling and/or coercing Plaintiff and class members
8 to purchase goods from them violates California Labor Code section 450.

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

20 164. At all relevant times, on information and belief, Defendants failed, on a
21 company-wide basis, to provide written notice to Plaintiff and class members that lists the
22 requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure
23 to provide Plaintiff and class members with written notice of basic information regarding their
24 employment with Defendants is in violation of California Labor Code section 2810.5.

25 165. As a result of the violations of California law herein described, Defendants
26 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
27 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
28 herein.

166. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TWELFTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

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

168. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

169. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

170. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants,

1 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
2 unfair business practice in violation of California Business & Professions Code sections
3 17200, *et seq.* (*Id.*)

4 171. A violation of California Business & Professions Code sections 17200, *et seq.*
5 may be predicated on any unfair business practice. In the instant case, Defendants' policies
6 and practices have violated the spirit of California's meal and rest period laws and constitute
7 acts against the public policy behind these laws.

8 172. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
9 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
10 benefits implemented by section 226.7 withheld and retained by Defendants during a period
11 that commences four years prior to the filing of this complaint; a permanent injunction
12 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
13 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
14 Procedure section 1021.5 and other applicable laws; and an award of costs.

15 **REQUEST FOR JURY TRIAL**

16 Plaintiff requests a trial by jury.

17 **PRAYER FOR RELIEF**

18 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
19 against Defendants, jointly and severally, as follows:

20 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
21 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
22 reserves the right to amend his prayer for relief to seek a different amount.

23 **Class Certification**

- 24 2. That this case be certified as a class action;
25 3. That Plaintiff be appointed as the representative of the Class and Subclass;
26 4. That counsel for Plaintiff be appointed as class counsel.

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

- 28 5. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
2 pay all overtime wages due to Plaintiff and class members;

3 6. For general unpaid wages at overtime wage rates and such general and special
4 damages as may be appropriate;

5 7. For pre-judgment interest on any unpaid overtime compensation commencing
6 from the date such amounts were due, or as otherwise provided by law;

7 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a); and

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

11 **As to the Second Cause of Action**

12 10. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
14 Order by willfully failing to pay minimum wages to Plaintiff and class members;

15 11. For general unpaid wages and such general and special damages as may be
16 appropriate;

17 12. For pre-judgment interest on any unpaid compensation from the date such
18 amounts were due, or as otherwise provided by law;

19 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code section 1194(a);

21 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

22 15. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Third Cause of Action**

25 16. That the Court declare, adjudge, and decree that Defendants violated California
26 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
27 willfully failing to provide all meal periods to Plaintiff and class members;

28 17. That the Court make an award to the Plaintiff and class members of one (1)

hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

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As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

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43. For all actual, consequential and incidental losses and damages, according to proof;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

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

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by failing to provide Plaintiff and class members with reporting time pay;

50. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law; and

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

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-

1 related expenses and costs incurred by Plaintiff and class members;

2 53. For unpaid business-related expenses and such general and special damages as
3 may be appropriate;

4 54. For pre-judgment interest on any unpaid business-related expenses from the
5 date such amounts were due, or as otherwise provided by law;

6 55. For all actual, consequential, and incidental losses and damages, according to
7 proof;

8 56. For attorneys' fees and costs pursuant to California Labor Code section
9 2802(c), or as otherwise provided by law; and

10 57. For such other and further relief as the Court may deem equitable and
11 appropriate.

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

13 58. That the Court declare, adjudge and decree that Defendants violated the
14 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
15 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
16 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
17 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
18 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
19 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
20 earned wages upon termination); 204 (by failing to timely pay all earned wages during
21 employment); 450 (by compelling and/or coercing employees to patronize employer's
22 business); 1198 and the applicable IWC Wage Order (by failing to provide reporting time
23 pay); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802
24 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of
25 material terms of employment);

26 59. For civil penalties pursuant to the California Labor Code, including sections
27 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code
28 sections 201, 202, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,

1197.1, 1198, 2802, and 2810.5;

60. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

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

As to the Eleventh Cause of Action

63. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, compelling and/or coercing Plaintiff and class members to patronize Defendants' business, failing to pay Plaintiff and class members reporting time pay, failing to reimburse Plaintiff and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

64. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

65. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

1 California Code of Civil Procedure section 1021.5; and

2 67. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Twelfth Cause of Action**

5 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
6 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
7 an unfair business practice in violation of California Business and Professions Code sections
8 17200, *et seq.*;

9 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
10 from Plaintiff and class members and prejudgment interest from the day such amounts were
11 due and payable;

12 70. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully acquired by
14 Defendants as a result of violations of California Business & Professions Code sections
15 17200, *et seq.*;

16 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure section 1021.5;

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

19 73. For such other and further relief as the Court may deem equitable and
20 appropriate.

21
22 Dated: May 15, 2023

Respectfully submitted,

23 Capstone Law APC

24 

25 By: _____

26 Robert Drexler
27 Molly DeSario
28 Jonathan Lee

Attorneys for Plaintiff Ryan Blake

EXHIBIT “1”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

March 9, 2023

VIA ONLINE SUBMISSION

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

Subject: *Ryan Blake v. Old Crow Smokehouse Orange LLC, et al.*

Dear PAGA Administrator:

This office represents Ryan Blake in connection with his claims under the California Labor Code. Mr. Blake was an employee of OLD CROW SMOKEHOUSE ORANGE, LLC; SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.; SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ & SPIRITS SANTANA ROW, LP; SAUCED BBQ & SPIRITS LIVERMORE, LLC; SAUCED BBQ & SPIRITS EL SEGUNDO, LP; PLUCKED, LLC; and/or FAT CHANCE ENTERTAINMENT, INC. For the purposes of this letter, Mr. Blake collectively refers to these entities as “SAUCED BBQ.”

The employers may be contacted directly at the addresses below:

OLD CROW SMOKEHOUSE ORANGE, LLC 2300 FIRST ST. STE 220 LIVERMORE, CA 94550	SAUCED BBQ & SPIRITS WALNUT CREEK, L.P. 2300 FIRST ST STE 220 LIVERMORE, CA 94550
SAUCED BBQ & SPIRITS SACRAMENTO, L.P. 2300 FIRST ST STE 220 LIVERMORE, CA 94550	SAUCED BBQ & SPIRITS SANTANA ROW, LP 2300 FIRST ST STE 220 LIVERMORE, CA 94550
SAUCED BBQ & SPIRITS LIVERMORE, LLC 2300 FIRST ST STE 220 LIVERMORE, CA 94550	SAUCED BBQ & SPIRITS EL SEGUNDO, LP 2300 FIRST ST STE 220 LIVERMORE, CA 94550
PLUCKED, LLC 2300 FIRST STREET, STE 220 LIVERMORE, CA 94550	FAT CHANCE ENTERTAINMENT, INC. 2300 FIRST STEET, SUITE 220 LIVERMORE, CA 94550

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

SAUCED BBQ employed Mr. Blake as an hourly paid, non-exempt employee from approximately July 2022 to October or November 2022. Mr. Blake worked for SAUCED BBQ as a Line Cook at its restaurant location in Orange, California. During his employment, Mr. Blake typically worked six (6) to eight (8) hours per day, and three (3) to five (5) days per week. At the time Mr. Blake's employment with SAUCED BBQ ended, he earned \$20.00 per hour. His job duties included, without limitation, preparing and cooking food, stocking ingredients, and cleaning.

SAUCED BBQ committed one or more of the following Labor Code violations against Mr. Blake, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

SAUCED BBQ's Company-Wide and Uniform Payroll and HR Practices

OLD CROW SMOKEHOUSE ORANGE, LLC; SAUCED BBQ & SPIRITS LIVERMORE, LLC; and PLUCKED, LLC are California limited liability companies, while SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.; SAUCED BBQ & SPIRITS SACRAMENTO, L.P.; SAUCED BBQ & SPIRITS SANTANA ROW, LP; and SAUCED BBQ & SPIRITS EL SEGUNDO, LP are California limited partnerships. FAT CHANCE ENTERTAINMENT, INC. is a California corporation. Together, they own and operate approximately 10 "Sauced BBQ & Spirits" and "Plucked" restaurant locations throughout California. Upon information and belief, SAUCED BBQ maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Livermore, California, for all non-exempt, hourly paid employees working for SAUCED BBQ in California, including Mr. Blake and other aggrieved employees. At all relevant times, SAUCED BBQ issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Blake and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all

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

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.

SAUCED BBQ willfully failed to pay all overtime wages owed to Mr. Blake and other aggrieved employees. During the relevant time period, Mr. Blake 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, SAUCED BBQ had, and continues to have, a company-wide policy of circumventing the payment of overtime wages to minimize labor costs. For example, SAUCED BBQ implemented a policy that moved time worked over eight (8) hours to different days to reduce or eliminate overtime wages they would otherwise be required to pay. Specifically, when Mr. Blake and other aggrieved employees worked closing shifts on weekends, SAUCED BBQ counted time worked after eight (8) hours toward the next day and therefore treated any overtime extending into the following day as two (2) separate shifts, so Mr. Blake 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. For example, according to SAUCED BBQ's time records, Mr. Blake worked an 8.15-hour shift that began on July 22, 2022, at 4:00 p.m. and ended on July 23, 2022, at 12:41 a.m., but SAUCED BBQ moved the time worked from 12:32 a.m. to 12:41 a.m. to a separate shift on July 23, 2022. Mr. Blake should have been paid 8 hours of straight-time, and 0.15 hours of time-and-a-half, but instead, on information and belief, SAUCED BBQ only paid him 8.15 hours of straight-time for that shift. As another example, on July 30, 2022, Mr. Blake worked an 8.22-hour shift that began at 4:01 p.m. and ended at 12:47 a.m., but SAUCED BBQ applied the time worked from 12:34 a.m. to 12:47 a.m. to the shift Mr. Blake later worked on July 31, 2022 from 5:48 p.m. to 11:40 p.m. Thus, on information and belief, SAUCED BBQ paid Mr. Blake 8.00 hours of straight time for July 30th and 6.09 hours of straight time for July 31st when he should have been paid 8.00 hours of straight time plus 0.22 hours of time-and-a-half for July 30th and 5.87 hours of straight time for July 31st.

Second, SAUCED BBQ had, and continues to have, a company-wide policy and/or practice requiring Mr. Blake and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, because SAUCED BBQ's timekeeping system was integrated with the company's point-of-sale ("POS") system, Mr. Blake and other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions and input food orders for preparation. For instance, Mr. Blake was required to wait several minutes under SAUCED BBQ's control until a POS machine was available for clocking-in, time for which he was not paid. Additionally, SAUCED BBQ required Mr. Blake and other aggrieved employees to work off-the-clock after their scheduled shifts ended. For example, Mr. Blake spent approximately 30 minutes and up to one (1) hour cleaning the kitchen after clocking out because management frowned upon employees accruing overtime. Further, SAUCED BBQ's management would request that Mr. Blake come into the office after he had already clocked out for the day to discuss work-related matters for up to 30 minutes at a time. Thus, SAUCED BBQ failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Blake and other aggrieved employees received no compensation for this time.

Third, on information and belief, SAUCED BBQ 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. SAUCED BBQ's uniform use of labor budgets has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few

employees on duty to handle the workload and attend to customers. Because SAUCED BBQ did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Blake and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, SAUCED BBQ has a practice of failing to schedule meal periods, which further caused Mr. Blake and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Blake and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Fourth, SAUCED BBQ's timekeeping system prevented Mr. Blake and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Blake and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, SAUCED BBQ's timekeeping system further prevented Mr. Blake and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Furthermore, on information and belief, because SAUCED BBQ frowned upon employees accruing meal period penalties, SAUCED BBQ's management pressured Mr. Blake 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 the meal penalties that would need to be paid by SAUCED BBQ. Thus, SAUCED BBQ did not record all hours worked during meal periods, and Mr. Blake and other aggrieved employees performed work during meal periods for which they were not paid.

SAUCED BBQ knew or should have known that as a result of these company-wide practices and/or policies, Mr. Blake 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 Mr. Blake 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.

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

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so

fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

First, as stated above, SAUCED BBQ had a company-wide policy and/or practice requiring Mr. Blake and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including waiting to clock in for the start of their shifts because other employees were using the POS system, cleaning and completing closing duties, and discussing work-related matters with management after clocking out. Thus, SAUCED BBQ failed to track this time Mr. Blake and other aggrieved employees spent working off-the-clock, and Mr. Blake and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to SAUCED BBQ’s uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Blake and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Furthermore, as set forth above, on information and belief, SAUCED BBQ systematically failed to pay Mr. Blake and other aggrieved employees for actual hours worked during unpaid meal periods, because SAUCED BBQ’s timekeeping system locked out Mr. Blake and other aggrieved employees for 30 minutes when they clocked out for a meal period. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, SAUCED BBQ’s management pressured employees to clock out for meal periods even when meal periods were missed, short, and/or interrupted. Thus, SAUCED BBQ systematically failed to pay Mr. Blake and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SAUCED BBQ did not pay at least minimum wages for all hours worked by Mr. Blake and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SAUCED BBQ 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, SAUCED BBQ regularly failed to pay at least minimum wages to Mr. Blake and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Blake 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.

As stated, SAUCED BBQ had, and continues to have, company-wide policies and/or practices of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Blake and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Blake and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Blake was required to work through his meal periods or could not take his meal periods until after five (5) hours into his shifts, due to the heavy workload and lack of coverage. Thus, SAUCED BBQ failed to provide Mr. Blake and other aggrieved employees with compliant 30-minute meal periods.

Also, as stated, SAUCED BBQ's company-wide timekeeping system prevented Mr. Blake and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Blake and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Blake was unable to record when his meal periods were interrupted or shortened by SAUCED BBQ's management wanting to discuss work-related matters and asking him questions during his meal periods.

Further, as set forth above, on information and belief, because SAUCED BBQ frowned upon employees accruing meal period penalties, SAUCED BBQ's management pressured 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 the meal penalties that would need to be paid by SAUCED BBQ.

Moreover, SAUCED BBQ 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. Mr. Blake 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.

SAUCED BBQ knew or should have known that as a result of its policies and practices, Mr. Blake and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SAUCED BBQ further knew or should have known that it did not pay Mr. Blake and other aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted.

In addition, SAUCED BBQ engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Blake and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SAUCED BBQ did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, SAUCED BBQ did not pay other aggrieved employees at the correct rate of pay for premiums because SAUCED BBQ 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, SAUCED BBQ failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Blake and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, SAUCED BBQ regularly failed to authorize and permit Mr. Blake 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, SAUCED BBQ's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Blake and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, SAUCED BBQ also failed to schedule rest periods, which, coupled with SAUCED BBQ's failure to provide adequate rest period coverage, further led to Mr. Blake and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, SAUCED BBQ maintained a company-wide on-premises rest period policy, which mandated that Mr. Blake and other aggrieved employees remain on SAUCED BBQ's premises during their rest periods. Because Mr. Blake 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, SAUCED BBQ effectively maintained control over Mr. Blake and other aggrieved employees during rest periods.

As a result, Mr. Blake and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Blake had to forego his rest periods entirely because the restaurant was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods.

SAUCED BBQ also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Blake and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that SAUCED BBQ did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SAUCED BBQ did not pay other aggrieved

employees at the correct rate of pay for premiums because SAUCED BBQ 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, SAUCED BBQ failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Blake and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(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. 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, SAUCED BBQ has knowingly and intentionally provided Mr. Blake and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SAUCED BBQ issued uniform wage statements to Mr. Blake 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, SAUCED BBQ violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SAUCED BBQ did not record the time Mr. Blake and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), SAUCED BBQ did not list the correct amount of gross wages and net wages earned by Mr. Blake and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SAUCED BBQ failed to accurately list the total number of hours worked by Mr. Blake 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 SAUCED BBQ did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, SAUCED BBQ did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, SAUCED BBQ also failed to list the correct amount of net wages in violation of section 226(a)(5). SAUCED BBQ 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), SAUCED BBQ willfully failed to maintain accurate payroll records for Mr. Blake 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, SAUCED BBQ engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Blake and other aggrieved employees in violation of section 1198. Furthermore, in light of SAUCED BBQ’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, SAUCED BBQ kept no records of meal start and end times for second meal periods.

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

Mr. Blake 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, SAUCED BBQ failed to pay Mr. Blake 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.

Mr. Blake 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.

SAUCED BBQ willfully failed to pay Mr. Blake and other aggrieved employees who are no longer employed by SAUCED BBQ 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 SAUCED BBQ's employ.

Mr. Blake 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 § 450 – Compelling Patronization

Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

During the relevant time period, SAUCED BBQ had a company-wide policy of not providing a sufficient number of uniform items to Mr. Blake and other aggrieved employees in relation to the shifts they were scheduled to work. During his employment, Mr. Blake was scheduled to work five (5) days per week and SAUCED BBQ provided him with only one (1) shirt and one (1) hat, forcing him to purchase additional shirts and hats from SAUCED BBQ.

SAUCED BBQ's conduct of compelling and/or coercing Mr. Blake and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Mr. Blake 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 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, SAUCED BBQ violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because SAUCED BBQ failed to pay Mr. Blake 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 usual or scheduled day’s work.

SAUCED BBQ had a company-wide practice of sending Mr. Blake 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 Mr. Blake and other aggrieved employees for half of their usual or scheduled shift. For example, a few times throughout his employment, when scheduled to work a seven (7) hour shift, SAUCED BBQ’s managers sent Mr. Blake home before he had an opportunity to work at least half of his scheduled shift, but on information and belief, Mr. Blake was only paid for the time he had worked. Although Mr. Blake and other aggrieved employees would report to work based on the schedule that SAUCED BBQ provided to them, SAUCED BBQ would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Blake 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).

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

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

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

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

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

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

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

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

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area

and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

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

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

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, SAUCED BBQ, on a company-wide basis, required Mr. Blake and other aggrieved employees to use their 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 and/or mobile data expenses. For example, Mr. Blake was required to use his personal cellular phone to keep logs of food temperatures, take photos for SAUCED BBQ's social media channels, and to check his work schedules. Although SAUCED BBQ required Mr. Blake and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, SAUCED BBQ failed to reimburse them for their costs incurred.

Additionally, during the relevant time period, SAUCED BBQ expected Mr. Blake and other aggrieved employees to report to work in clean and presentable uniforms bearing the company logo, including a shirt and a hat, but only provided Mr. Blake and other aggrieved employees with one (1) shirt and one (1) hat at the time of hire. Thus, SAUCED BBQ failed to provide their employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, forcing Mr. Blake and other aggrieved employees to pay out-of-pocket for their uniforms. For example, Mr. Blake spent approximately \$90 out-of-pocket to purchase four (4) shirts and one (1) hat from SAUCED BBQ, but was not reimbursed for his costs.

Furthermore, on a company-wide basis, SAUCED BBQ failed to provide Mr. Blake and other aggrieved employees with uniform cleaning services or reimburse them for cleaning expenses incurred. For example, due to the nature of restaurant work, Mr. Blake's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, Mr. Blake had to wash his uniform items more frequently than other clothing and/or separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. Thus, SAUCED BBQ failed to provide and maintain uniforms they required Mr. Blake and other aggrieved employees to wear during their shifts and forced them to incur the costs of purchasing and maintaining employee uniforms.

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

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

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015,

an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

California Labor Code § 558(a)

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

Accordingly, Mr. Blake seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Blake, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SAUCED BBQ for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

Mao Shiokura
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 'Mao Shiokura', with a stylized, flowing script.

Mao Shiokura

Copy: OLD CROW SMOKEHOUSE ORANGE, LLC (via U.S. Certified Mail); SAUCED BBQ & SPIRITS WALNUT CREEK, L.P. (via U.S. Certified Mail); SAUCED BBQ & SPIRITS SACRAMENTO, L.P. (via U.S. Certified Mail); SAUCED BBQ & SPIRITS SANTANA ROW, LP (via U.S. Certified Mail); SAUCED BBQ & SPIRITS LIVERMORE, LLC (via U.S. Certified Mail); SAUCED BBQ & SPIRITS EL SEGUNDO, LP (via U.S. Certified Mail); PLUCKED, LLC (via U.S. Certified Mail); FAT CHANCE ENTERTAINMENT, INC. (via U.S. Certified Mail)

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

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

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

Domestic Return Receipt

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



7022 2410 0000 2406 4994

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

Extra Services & Fees (Check box and fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
Postmark

13466 V
OLD CROW

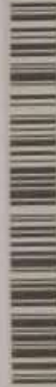
SAUCED BBQ & SPIRITS WALNUT
CREEK, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550

SAUCED BBQ & SPIRITS WALNUT
CREEK, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550

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.

SAUCED BBQ & SPIRITS WALNUT
CREEK, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550



9590 9402 7690 2122 7172 97

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4994

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone Law, APC

1875 Century Park, East, 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7022 2410 0000 2405 7590

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

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

OFFICIAL USE

Certified Mail™

1. If you are using a meter, attach it to the back of the envelope.

2. If you are using a meter, attach it to the back of the envelope.

3. If you are using a meter, attach it to the back of the envelope.

Postmark

SAUCED BBQ & SPIRITS
SACRAMENTO, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550

SAUCED BBQ & SPIRITS
SACRAMENTO, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550

SENDER: COMPLETE THIS SECTION

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

SAUCED BBQ & SPIRITS
SACRAMENTO, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550



9590 9402 7690 2122 7173 10

2. Article Number (transfer from service label)

7022 2410 0000 2405 7590

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

□ Agent

□ Addressee

C. Date of Delivery

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

3. Service Type

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

Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2405 7583

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

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

Blake V.
AD LAW

SAUCED BBQ & SPIRITS SANTANA
ROW, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550

SAUCED BBQ & SPIRITS SANTANA
ROW, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550

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.

SAUCED BBQ & SPIRITS SANTANA
ROW, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550



9590 9402 7690 2122 7173 03

2. Article Number (Transfer from service label)

7022 2410 0000 2405 7583

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

C. Date of Delivery

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

Service Type

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

Domestic Return Receipt

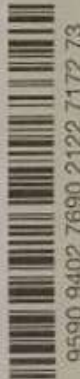
CERTIFIED MAIL



7022 2410 0000 2405 7576

**SAUCED BBQ & SPIRITS
LIVERMORE, LLC
2300 FIRST ST STE 220
LIVERMORE, CA 94550**

**SAUCED BBQ & SPIRITS
LIVERMORE, LLC
2300 FIRST ST STE 220
LIVERMORE, CA 94550**



9590 9402 7690 2122 7172 73

2. Account Number Transfer from service label

7022 2410 0000 2405 7576

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

Domestic Return Receipt

U.S. Postal ServiceSM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Controlled Trial (n=)

Only Services & Tools (Phone Fax, add'l fee as appropriate)

Medical and nursing services

☐ Putnam Place (Newbury)	Postmark
---	----------

**SAUCED BBQ & SPIRITS
LIVERMORE, LLC
2300 FIRST ST STE 220
LIVERMORE, CA 94550**

9252 5042 0000 0742 2202

CONCLUSIONS AND FUTURE QUESTIONS

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.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

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

10

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

If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery
☒ Certified Mail®

☐ Certified Mail Restricted Delivery☐ Collect on Delivery
☐ Collect on Delivery
Statement Callouts☐ 100% points

Restricted Delivery

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

☐ Signature Confirmation
Restricted Delivery

University of Illinois at Chicago

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



7022 2410 0000 2405 7569

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
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
Postmark
None

SAUCED BBQ & SPIRITS EL
SEGUNDO, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550

SAUCED BBQ & SPIRITS EL
SEGUNDO, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550

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.

SAUCED BBQ & SPIRITS EL
SEGUNDO, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550



9590 9402 7690 2122 7173 41

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7569

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

COMPLETE THIS SECTION ON DELIVERY

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

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

Domestic Return Receipt

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



7022 2410 0000 2405 7552

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

Extra Services & Fees (check box and fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
Postmark

BLAKE V.
OLD CRAW

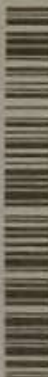
PLUCKED, LLC
2300 FIRST STREET, STE 220
LIVERMORE, CA 94550

PLUCKED, LLC
2300 FIRST STREET, STE 220
LIVERMORE, CA 94550

SENDER: COMPLETE THIS SECTION

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

PLUCKED, LLC
2300 FIRST STREET, STE 220
LIVERMORE, CA 94550



9590 9402 7690 2122 7173 34

2. Article Number (Transfer from service label)

7022 2410 0000 2405 7552

COMPLETE THIS SECTION ON DELIVERY

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

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

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



7022 2410 0000 2405 7545

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 \$
Extra Services (if any, enter fee and fee is appropriate)
☐ Return Receipt (hardcopy) \$
☐ Certified Mail Restricted Delivery \$

Postmark
Date

13 June 11
09:05 CEN

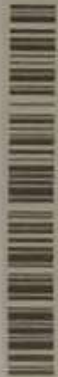
FAT CHANCE ENTERTAINMENT,
INC.
2300 FIRST STEET, SUITE 220
LIVERMORE, CA 94550

FAT CHANCE ENTERTAINMENT,
INC.
2300 FIRST STEET, SUITE 220
LIVERMORE, CA 94550

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.

FAT CHANCE ENTERTAINMENT,
INC.
2300 FIRST STEET, SUITE 220
LIVERMORE, CA 94550



9590 9402 7690 2122 7173 27

2. Article Number (Transfer from service label)

7022 2410 0000 2405 7545

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee

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

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

4. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Restricted Delivery

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

SAUCED BBQ & SPIRITS WALNUT CREEK, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7172 97

2. Article Number (Transfer from service label)
7022 2410 0000 2406 4994

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

FAT CHANCE ENTERTAINMENT, INC.
2300 FIRST STEET, SUITE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7173 27

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7545

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

SAUCED BBQ & SPIRITS SANTANA ROW, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7173 03

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7583

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

SAUCED BBQ & SPIRITS LIVERMORE, LLC
2300 FIRST ST STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7172 73

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7576

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

PLUCKED, LLC
2300 FIRST STREET, STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7173 34

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7552

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

SAUCED BBQ & SPIRITS EL SEGUNDO, LP
2300 FIRST ST STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7173 41

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7569

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

OLD CROW SMOKEHOUSE ORANGE, LLC
2300 FIRST ST. STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7172 80

2. Article Number (Transfer from service label)
7022 2410 0000 2406 5007

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

SAUCED BBQ & SPIRITS SACRAMENTO, L.P.
2300 FIRST ST STE 220
LIVERMORE, CA 94550

9590 9402 7690 2122 7173 10

2. Article Number (Transfer from service label)
7022 2410 0000 2405 7590

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jennifer M Geisler ☐ Agent ☐ Addressee

B. Received by (Printed Name)
Jennifer M Geisler

C. Date of Delivery

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

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

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

On **May 17, 2023**, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Jason L. Morris
Tara C. Dudum
Harlye S. Carlton
NEWMAYER & DILLION LLP
2033 N. Main Street, Suite 500
Walnut Creek, CA 94596
Jason.Morris@ndlf.com
Tara.Dudum@ndlf.com
Harlye.Carlton@ndlf.com

Attorneys for Defendants
OLD CROW SMOKEHOUSE ORANGE,
LLC, et al.

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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 17, 2023**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature