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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KELVIN MCCLAINE, Aggrieved Employee of Defendants, on Behalf of the State of California's Labor and Workforce Development Agency for All Aggrieved Employees of Defendants, Plaintiff, v. S&B RESTAURANT GROUP LLC DBA CHICK-FIL-A, a California Limited Liability Company; and DOES 1-100, Inclusive, Defendants.	Case No. 25STCV36755 **<u>REPRESENTATIVE ACTION</u>** **COMPLAINT FOR:** **VIOLATION OF CALIFORNIA'S LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE 2698, *ET SEQ*.)** **DEMAND FOR JURY TRIAL**

Plaintiff KELVIN MCCLAINE (hereinafter, “Plaintiff”), who is an aggrieved employee of Defendants S&B RESTAURANT GROUP LLC DBA CHICK-FIL-A and DOES 1 through 100, inclusive, (collectively, “Defendants”), brings this representative action as proxy for the State of California’s Labor and Workforce Development Agency (“LWDA”) on behalf of all current and former aggrieved employees of Defendants in California, and hereby alleges the following facts and claims against Defendants, and respectfully request civil penalties, all other available relief, and a trial by jury of all issues and causes of action so triable.

INTRODUCTION

1. Plaintiff brings this representative action as the proxy for the State of California’s LWDA against Defendants for civil penalties pursuant to California’s Private Attorneys General Act of 2004 (hereinafter, the “PAGA”), Labor Code section 2698, *et seq*., resulting from Defendants’ violations of “wage and hour” laws protective of Defendants’ aggrieved employees under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders. The PAGA permits an aggrieved employee to bring a representative action as the State’s designated proxy on behalf of himself and all other current and former non-exempt aggrieved employees of an employer to recover civil penalties for violation of California’s Labor Code.

2. Defendants’ systematic pattern of Labor Code and IWC Wage Order violations toward Plaintiff and other current and former aggrieved employees include, but are not limited to:

a. Failure to provide meal periods and/or premium pay for non-compliant meal periods in violation of Labor Code sections 226.7, 512, 558, 1198, and 1199 and Section 11 of the IWC Wage Order(s);

b. Failure to authorize and permit all paid rest periods and/or provide premium pay for non-compliant rest periods in violation of Labor Code sections 226.7, 1197, 1198, and 1199, and Section 12 of the IWC Wage Order(s);

c. Failure to indemnify for business expenses in violation of Labor Code section 2802;

d. Failure to furnish accurate itemized wage statements in violation of Labor Code section 226(a); and

e. Failure to timely pay all final wages owed upon separation of employment in violation of Labor Code sections 201, 202, and 203.

PARTIES

3. Plaintiff KELVIN MCCLAINE is an individual over the age of eighteen (18). Plaintiff is and, at all relevant times mentioned in this Complaint, was a California citizen residing within Los Angeles County, California. Plaintiff was employed by Defendants in California as an hourly paid, non-exempt employee from approximately 2022 through October 3, 2025. Plaintiff was employed as a Team Lead at Defendants' location at 6801 S La Cienega Blvd, Los Angeles, California. At all relevant times herein, Plaintiff was an "employee" as that term is used in the Labor Code. During the applicable statutory period, Plaintiff was subject to various policies, procedures, and practices implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

4. Defendant S&B RESTAURANT GROUP LLC DBA CHICK-FIL-A is and at all relevant times herein was a California Limited Liability Company, having its principal place of business at 6801 S La Cienega Blvd, Los Angeles, CA 90045, and is the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California as/DBA Chick-fil-A, a fast-food restaurant franchise. Defendant S&B RESTAURANT GROUP LLC is an "employer" as the term is used in the Labor Code and IWC Wage Orders.

5. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on information and belief now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in California, including Los Angeles County, and each of the fictitiously named Defendants are responsible for the conduct alleged in this Complaint. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such fictitious names pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

6. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

7. Defendants, and each of them, proximately subjected Plaintiff to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

8. Defendants, and each of them, are now and/or at all times mentioned herein were the agents, servants and/or employees of some or all other Defendants, or vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise.

10. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

11. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

12. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

JURISDICTION AND VENUE

13. The California Superior Court has jurisdiction in this matter pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statutes under which this action is brought do not specify any other specific basis for jurisdiction.

14. The California Superior Court also has jurisdiction in this matter because both the

individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

15. The California Superior Court also has jurisdiction over Defendants because they are corporations and/or entities and/or persons with sufficient minimum contacts in California, are citizens of California, or otherwise intentionally availed themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code. Thus, this Court maintains appropriate jurisdiction to hear this matter.

16. Venue is proper in the Superior Court of California for the County of Los Angeles, pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in that liability arose in Los Angeles County because at least some of the acts and omissions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, exists, and/or has an agent in Los Angeles County.

FACTUAL ALLEGATIONS

17. During the applicable statutory period, Defendants employed Plaintiff as an hourly paid, non-exempt Team Lead at the Chick-fil-A location at 6801 S La Cienega Boulevard, Los Angeles, California from approximately 2022 through October 3, 2025.

18. During the relevant statutory period, Defendants failed to provide Plaintiff with compliant thirty minute off-duty meal periods for work periods and failed to pay him premium wages at his regular rate of pay thereto. For example, due to the high volume of work and demands of the customers in the restaurant, Plaintiff often took meal periods after the fifth hour of work and was not paid meal period premiums. Moreover, when Plaintiff was able to take his meal period, there were many occasions where it was cut short or interrupted.

19. During the relevant statutory period, Defendants failed to authorize and permit Plaintiff with off-duty rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and failed to pay him premium wages at his regular rate of pay on workdays he was not provided with an opportunity to take rest periods. For example, due to the high volume of

work and demands of the customers in the restaurant, Plaintiff's rest periods (typically two per shift) were often taken late and frequently cut short or interrupted due to operational demands. Plaintiff was not paid rest period premiums for these violations.

20. During the relevant statutory period, Defendants failed to indemnify Plaintiff for all necessary expenditures incurred in direct consequence of the discharge of his duties. Specifically, Plaintiff was required to use his personal cell phone for work-related applications including HotSchedules, Slack, and the Chick-fil-A app. Slack notifications were sent constantly, including during off-hours. Defendants provided no reimbursement for cell phone use or related expenses.

21. During the relevant statutory period, Defendants failed to provide Plaintiff with accurate itemized wage statements. As a result of the alleged violations discussed above, Defendants furnished wage statements that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned.

22. During the relevant statutory period, Defendant willfully failed to pay all wages owed to Plaintiff upon separation of employment. Plaintiff's final paycheck failed to include all earned wages, specifically failing to include owed meal and rest period premiums.

GENERAL ALLEGATIONS

23. Plaintiff and all other aggrieved employees are current and former non-exempt employees of Defendants that work or worked at Defendants' facilities in California as non-exempt employees during the statutory period.

24. Plaintiff is informed and believes, and thereon alleges, that during the applicable statutory period, Plaintiff and other current and former aggrieved employees were subject to the same various policies, procedures, and practices implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code.

25. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants failed and fail to provide Plaintiff and aggrieved employees with compliant thirty minute off-duty thirty-minute-long meal periods for work periods and failed to pay them premium wages at the regular rate of pay thereto.

26. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy

and/or practice, Defendants failed to relinquish control over Plaintiff and aggrieved employees to provide them with legally-compliant ten (10) minute off-duty rest periods for every four (4) hours of work or major fraction thereof, as required by California law and failed to pay premiums for the incompliant rest periods.

27. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants failed to indemnify Plaintiff and aggrieved employees for all necessary expenditures incurred in direct consequence of the discharge of their duties.

28. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants, failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements. As a result of alleged violations discussed above, Defendants furnished wage statements that failed to correctly show, among other items: (1) the gross wages earned, (2) all deductions, and (3) net wages earned.

29. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy and/or practice, Defendants willfully failed to pay all wages owed to Plaintiff and all other aggrieved employees upon separation of employment. By furnishing aggrieved employees with a final check that failed to include all earned and owed wages, specifically failing to include owed meal and rest period premiums, Defendants subjected itself to waiting-time penalties under Labor Code section 203

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(California Labor Code §§ 2698, *et seq*.)

30. Plaintiff incorporates by reference and realleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully set forth herein.

31. Pursuant to Labor Code section 2698, *et seq*., Plaintiff seeks to recover all applicable civil penalties and reasonable attorneys' fees and costs, permitted under PAGA through a representative action on behalf of himself and all other aggrieved employees that work or worked for Defendants during the relevant time period.

32. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative action is not subject to the formalities required of a class action and class certification of PAGA claims is not required.

33. Plaintiff is an “aggrieved employee” within the meaning of Labor Code section 2699(c) because she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations, as alleged herein. Thus, Plaintiff is well suited to represent the interests of all other aggrieved employees in in this PAGA representative action.

34. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil penalties recovered by aggrieved employees shall be distributed to the Labor and Workforce Development Agency (hereinafter “LWDA”) for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, and twenty-five percent (25%) shall be distributed to the aggrieved employees.

35. Plaintiff’s representative action alleges violations of certain Labor Code sections that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a) applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

36. On October 10, 2025, Plaintiff complied with Labor Code section 2699.3(a) by electronically filing written notice with the LWDA and serving written notice, via certified mail, upon the LWDA and Defendants regarding the specific provisions of the Labor Code alleged to have been violated by Defendants and Plaintiff’s intent to pursue civil penalties against Defendants on behalf of himself and all other aggrieved employees pursuant to PAGA. Attached hereto as **Exhibit 1** is a true and correct copy of Plaintiff’s notice letter.

37. Labor Code section 2699.3(a) provides in pertinent part that: “The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received… [u]pon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given… the aggrieved employee may commence a civil action pursuant to Section 2699.”

38. Sixty-five calendar days have passed since Plaintiff served notice upon the LWDA

and Defendants, and the LWDA did not provide notice of its intent to investigate Plaintiff's claims. Accordingly, Plaintiff exhausted his obligation to provide administrative notice and is authorized to commence this representative action seeking civil penalties on behalf of himself and all other aggrieved employees of Defendants.

39. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

40. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for which a civil penalty is not specifically provided, there is established a civil penalty that imposes a penalty of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of himself and aggrieved employees, seeks applicable civil penalties for violations of Labor Code sections 201, 202, 203 226, 226.7, 512, 1194, 1197, 1198, 1199, and 2802 during the statutory period as set forth below:

a. For violations of Labor Code section 226.7, 512, 1194, 1197 1198, 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred dollars ($100) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

b. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and other aggrieved employees an opportunity to take timely off-duty and uninterrupted thirty minute meal periods for every five hours worked, including timely off-duty and uninterrupted thirty minute long meal periods before the end of the fifth hour of work, and by failing to pay a premium wage equivalent to an additional hour of pay at the regular rate of pay for each day a compliant meal period was not provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

c. Defendants violated Labor Code section 226.7 by denying Plaintiff and other aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked, or major fraction thereof, and by failing to provide a premium wage equivalent to an additional hour of pay at the regular rate of pay for each workday that a compliant rest period was not provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

d. Defendants violated Labor Code section 2802 by forcing Plaintiff and aggrieved employees to make business related expenditures without reimbursement. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation;

e. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and aggrieved employees with accurate itemized wage statements correctly identifying, among other things, the correct wages earned, the correct amount of net wages earned, and the correct amount of deductions that were paid or should have been paid. Thus, pursuant to Labor Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely independent and apart from any other penalty, are subject to a civil penalty for violation Labor Code section 226(a) in the amount of two hundred and fifty dollars ($250) per aggrieved employee per violation in an initial citation and one thousand dollars ($1,000) per aggrieved employee for each violation in a subsequent citation;

f. Defendants violated Labor Code sections 201, 202, and 203 by willfully failing to timely pay Plaintiff and aggrieved employees all wages owed upon separation of employment by failing to pay all meal and rest period premiums. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation of these sections, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

42. At all material times, Defendants were Plaintiff and all other aggrieved employees' employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil penalties provided for under Labor Code section 558 are in addition to any other civil penalty provided by law.

43. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil penalty of fifty dollars ($50) for each initial violation and one hundred dollars ($100) for each subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all other aggrieved employees of Defendants were not provided with a compliant timely off-duty and uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours worked, or major fraction thereof, as alleged herein.

44. Defendants violated Labor Code section 1198 by failing to comply with the maximum hours of work and the standards conditions of labor fixed by the IWC under the "Hours and Days of Work", and "Record" sections of the applicable IWC Wage Order, by failing to keep and provide accurate records, and failing to timely pay owed wages upon separation of employment, as alleged herein. Thus pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For all civil penalties authorized by Labor Code section 2698, *et seq*.;

2. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty dollars ($250) per aggrieved employee for the first violation, and one thousand dollars ($1,000) per aggrieved employee for each subsequent violation;

3. For civil penalties under Labor Code section 210 in the amount of one hundred dollars ($100.00) for each aggrieved employee for each initial violation that was neither willful nor intentional, and two hundred dollars ($200.00) for each aggrieved employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee, for each subsequent violation, regardless of whether the subsequent violation was willful or intentional;

4. For civil penalties under Labor Code section 2699(f), for Labor Code violations without a specific civil penalty, in the amount of one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation;

5. For civil penalties under Labor Code section 558, as follows: (1) for an 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;

6. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), or other applicable laws;

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

8. For such additional relief as this Court may deem just and proper.

DATED: December 15, 2025

BOUCHER LLP

By: ______________________________

RAYMOND P. BOUCHER
ALEXANDER GAMEZ

Attorneys for Plaintiff Kelvin McClaine, Aggrieved Employee of Defendants, on Behalf of the State of California's Labor and Workforce Development Agency for All Aggrieved Employees of Defendants

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims alleged in Plaintiff's Complaint to the fullest extent authorized by law.

DATED: December 15, 2025

BOUCHER LLP

By: ______________________________
RAYMOND P. BOUCHER
ALEXANDER GAMEZ

Attorneys for Plaintiff Kelvin McClaine, Aggrieved Employee of Defendants, on Behalf of the State of California's Labor and Workforce Development *Agency for All Aggrieved Employees of Defendants*

EXHIBIT 1

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October 10, 2025

<u>ELECTRONICALLY FILED</u>

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
https://dir.tfaforms.net/308

<u>VIA CERTIFIED MAIL</u>

S&B Restaurant Group LLC
DBA Chick-fil-A
c/o Agent for Service of Process
Attn: Stanley Webster
6801 S La Cienega Blvd
Los Angeles, CA 90045

Re: *Kelvin McClaine v. S&B Restaurant Group LLC, et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 ("PAGA" or "the Act") (Lab. Code § 2698 *et seq*.), this letter shall serve as written notice of claims for civil penalties that will be pursued by Mr. Kelvin McClaine as proxy for the Labor and Workforce Development Agency ("LWDA") on behalf of all non-exempt aggrieved employees employed by S&B Restaurant Group LLC, DBA Chick-fil-A ("Chick-fil-A"), in California during the statutory period.

Chick-fil-A is a franchisee that owns and operates multiple fast food restaurant locations in California. Mr. McClaine was employed by Chick-fil-A as a Team Lead at its location at 6801 S La Cienega Blvd in Los Angeles for approximately three years with his employment ending on October 3, 2025. Pursuant to California law, Chick-fil-A has at all relevant times was Mr. McClaine's employer during the statutory period.

In his representative action, Mr. McClaine will seek civil penalties pursuant to PAGA as a result of Chick-fil-A's failure to: (1) provide proper meal periods and/or premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (2) provide proper rest periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (3) indemnify for business expenses (Lab. Code § 2802); (4) furnish complete and accurate itemized wage statements (Lab. Code § 226(a)); and (5) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes… [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee… under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means 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."

Section 11 of the applicable Wage Order provides that:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, Chick-fil-A failed and fail to provide Mr. McClaine and aggrieved employees with compliant thirty minute off-duty meal periods for work periods and failed to pay them premium wages at their regular rates of pay thereto. For example, due to the high volume of work and demands of the customers in the restaurant, Mr. McClaine often took meal periods after the fifth hour of work and was not paid meal period premiums. Moreover, if Mr. McClaine was able to take his meal period, there were many occasions where it was cut short or interrupted.

Accordingly, Mr. McClaine, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1197, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, "[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time."

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Section 12 of the applicable Wage Order provides that:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period 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.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, Chick-fil-A's policies and practices failed and fail to provide Mr. McClaine and aggrieved employees with off-duty rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays they failed to provide them with an opportunity to take rest periods. For example, due to the high volume of work and demands of the customers in the restaurant, Mr. McClaine often took late rest periods and was not paid rest period premiums. Moreover, if Mr. McClaine was able to take a rest period, there were many occasions where it was cut short or interrupted.

Accordingly, Mr. McClaine, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO REIMBURSE BUSINESS EXPENSES
(Labor Code § 2802)

In pertinent part, Labor Code section 2802(a) states that, "An employer shall indemnify his or her employee(s) for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties. At relevant times during the statutory period, Chick-fil-A required Mr. McClaine and aggrieved employees to incur business expenses which Chick-fil-A failed and/or refused to reimburse them for. For example, Mr. McClaine was required use his personal cell phone for work-related apps, including but not limited to HotSchedules, Slack, and the Chick-fil-A app, without compensation.

Accordingly, Mr. McClaine, on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is pay; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of $250.00 per employee per violation in an initial citation and $1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

Mr. McClaine and aggrieved employees were and continue to be furnished with inaccurate itemized wage statements during the statutory period. For example, as a result of the alleged violations discussed above, Chick-fil-A furnished wage statements that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned. Accordingly, Mr. McClaine on behalf of himself and other aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, and 2699)

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Upon information and belief, Chick-fil-A willfully failed and fail to provide aggrieved employees all wages due and owed upon separation of employment. By furnishing aggrieved employees with a final check that failed to include all earned and owed wages and meal and rest period premiums – as described above, Chick-fil-A violated Labor Code sections 201 or 202.

Accordingly, Mr. McClaine on behalf of himself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC WAGE ORDERS

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of $50 for any initial violation for each pay period in which an employee is underpaid, and $100 for each subsequent violation.

As set forth above, Chick-fil-A failed to provide Mr. McClaine and aggrieved employees compliant meal periods and/or rest periods and failed to pay premium wages owed. Accordingly, Mr. McClaine, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Mr. McClaine's employment with Chick-fil-A, including wage statements and Mr. McClaine's confirmation of Chick-fil-A's unlawful practices and policies. As a result of the foregoing violations, Mr. McClaine is entitled to file a Complaint and invoke the protections of the Act. Mr. McClaine has placed Chick-fil-A on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: ______________________________
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