September 13, 2024

BET TZEDEK
JUSTICE FOR ALL

Labor and Workforce Development Agency
Attn. PAGA Administrator
(https://dir.govfa.net/308)

Re: JOSE MARTIN GONZALEZ CASTILLO v. YUEH MEI TUCEY AKA NORA TUCEY, YUEH MEI TUCEY AKA NORA TUCEY AS THE EXECUTOR OF THE ESTATE OF JACK ARTHUR TUCEY, YUEH MEI TUCEY AKA NORA TUCEY AS TRUSTEE OF THE TUCEY TRUST, EL GALLEON RESTAURANT, INC., MI CASITA AUTHENTIC MEXICAN RESTAURANT, INC., ANTONIO'S PIZZERIA & CABARET, INC., ORIGINAL ANTONIO'S PIZZERIA, INC., FOOD BROKERS INTERNATIONAL, INC., dba HOTEL CATALINA, dba CATALINA COURTYARD HOTEL dba COURTYARD GARDEN SUITES, ORIGINAL JACK'S RESTAURANT AND BAKERY, INC.
California Labor Code § 2699 Penalties

Dear Labor and Workforce Development Agency representative:

Bet Tzedek Legal Services represents Jose Martin Gonzalez Castillo ("Plaintiff") and a proposed group of current and former similarly situated aggrieved employees of Nora Tucey, El Galleon Restaurant, Inc., Mi Casita Authentic Mexican Restaurant, Inc., Antonio's Pizzeria & Cabaret, Inc., Original Antonio's Pizzeria, Inc., Food Brokers International, Inc., and Original Jack's Restaurant and Bakery, Inc. (collectively, "Defendants") in the State of California. Bet Tzedek Legal Services is a nonprofit legal aid organization, as defined in Labor Code section 2699 subdivision(c)(2). Defendant Nora Tucey, and Jack Tucey were owners, managers or major interest holders of Defendants during the relevant period. Defendant Nora Tucey, and Jack Tucey[1], acting on behalf of Mi Casita Authentic Mexican Restaurant, Inc., Antonio's Pizzeria & Cabaret, Inc., Original Antonio's Pizzeria, Inc., Food Brokers International, Inc., and Original Jack's Restaurant and Bakery, Inc. are responsible for the occurrences and violations herein alleged and the resulting damages were proximately caused by their conduct. During the relevant time period, Defendant Nora Tucey was the manager and supervisor of Plaintiff and other aggrieved employees and had the power to hire, discipline, set schedules, and assign duties to Plaintiff and other aggrieved employees. During the relevant period, each Defendant directly or indirectly or through an agent or other person exercised control over the wages, hours or working conditions of Plaintiff and all of Defendants' aggrieved employees. The purpose of this letter is to comply with the Private Attorney's General Act of 2004 ("PAGA"), pursuant to California Labor Code § 2698, *et. seq*. We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiff and all of Defendants' aggrieved employees.

[1] Jack Tucey died on [redacted], and on information and belief, Defendant Nora Tucey, as his widow, is the trustee of Jack Tucey's trust and/or the executor of Jack Tucey's estate.

Plaintiff wishes to bring a representative action on behalf of himself, the State of California, and other former employees against whom violations of the same provisions of the Labor Code were committed. The aggrieved employees are defined as all persons who held positions including but not limited to bartenders, cooks, bussers, dishwashers, housekeepers, servers, receptionists, waiters, hotel clerks, maintenance staff, and other non-exempt, hourly paid workers who have been employed by Defendants in the State of California at any time during one or more pay periods since one year prior to the date of this letter and continued until Defendants ceased operation ("aggrieved employees").

The facts and theories underlying each of these claims are as follows: [2]

Defendants' Company-Wide and Uniform Payroll and HR Practices

Defendants owned and operated numerous hospitality establishments, including restaurants and hotels, in Avalon, California. Upon information and belief, Defendants maintained a single, centralized Human Resources (HR) department at their company headquarters in Avalon, California, for all non-exempt, hourly paid employees working for Defendants in California, including Plaintiff and other aggrieved employees. At all relevant times, Defendants issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Plaintiff and other aggrieved employees, regardless of their location or position.

Upon information and belief, Defendants maintained a centralized Payroll department at their company headquarters in Avalon, California, which processed payroll for all non-exempt, hourly paid employees working for Defendants in California, including Plaintiff and other aggrieved employees. Further, Defendants issued the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Plaintiff and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, Defendants utilized the same methods and formulas when calculating wages due to Plaintiff and other aggrieved employees in California.

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, for the first eight (8) hours worked on the seventh (7th) day of work, at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day, more than forty (40) hours in a workweek, or for the first eight (8) hours worked on the seventh (7th) day of work. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's

[2] These facts, theories, and claims are based on Plaintiff's experience and counsel's review of those records currently available relating to Plaintiff'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, Plaintiff 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.

regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

First, during the relevant time period, on information and belief, Defendants had a company-wide policy and/or practice of discouraging and impeding Plaintiff and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Plaintiff and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, Defendant Nora Tucey occasionally logged out of the timekeeping system on behalf of Plaintiff and other aggrieved employees and required them to continue working off-the-clock. Defendant Nora Tucey also directed managers and supervisors to require Plaintiff and other aggrieved employees to log out of the timekeeping system after eight (8) hours and continue working off-the-clock. Defendant Nora Tucey told employees "[j]ust so you know, we don't pay overtime," or words to that effect. Further, upon information and belief, Defendants' management frequently altered and/or falsified Plaintiff's and other aggrieved employees' timekeeping entries to reflect scheduled shift hours instead of actual hours worked. For example, approximately once or twice a week, Plaintiff would clock out at the end of his scheduled shift but continue working at his managers' direction, completing such duties as cleaning tables and the soda machine and throwing away garbage, which could take up to 15-20 minutes. This off-the-clock work could have been recorded by Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and other aggrieved employees.

Second, pursuant to their policy of limiting overtime, Defendants sometimes required Plaintiff and other aggrieved employees to use different employee I.D. numbers or different timekeeping codes in their timekeeping system, paid Plaintiff and other aggrieved employees in cash, and/or paid Plaintiff and other aggrieved employees with checks from different business entities to avoid paying overtime premiums. For example, after completing a 5-hour shift at Defendants' El Galleon Restaurant location, Plaintiff was scheduled to immediately work another 4-hour shift at Defendants' Antonio's Pizzeria location. However, Plaintiff's manager instructed him to clock in for his second shift using a "Banquet" code in the timekeeping system so that any time Plaintiff worked over eight (8) hours that day would be paid at his straight hourly paid instead of the correct overtime rate of pay. Defendants would also often pay Plaintiff and other aggrieved employees in cash in order to conceal their failure to pay the legally required overtime rate. As another example, Defendants would also pay Plaintiff and other aggrieved employees with two separate checks from two separate business entities in order to conceal their failure to pay the legally required overtime rate for hours worked in a single day.

Third, during the relevant period, Defendants had a company-wide "on-call" policy, whereby they scheduled Plaintiff and other aggrieved employees to work "on-call," or on standby. These "on-call" shifts worked to Defendants' benefit and to the detriment of Plaintiff and other aggrieved employees. By utilizing "on-call" shifts, Defendants received the benefit of being able to maximize revenue by having a standby workforce they could choose to utilize or not, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work.

When scheduled for an "on-call" or standby shift, Plaintiff and other aggrieved employees were required to wait for Defendants to call them prior to their scheduled standby shift. Plaintiff and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to arrive at the work premises within 15 minutes and work their standby shift. When scheduled to be "on-call" for a standby shift, Plaintiff and other aggrieved employees were controlled by Defendants because they were forced to put their lives on hold and could not use that time freely for their own purposes. Defendants also prohibited Plaintiff and other aggrieved employees from drinking alcohol during "on call" days. For example, Plaintiff refrained from making plans altogether while "on-call" for a standby shift because he knew that he had to drop whatever he was doing at a moment's notice if he was instructed to work his standby shift. Defendants did not pay Plaintiff and other aggrieved employees for the time they spent waiting to hear whether they needed to report for work at their place of employment on days they ultimately were not called in.

Fourth, Defendants had company-wide policies and/or practices of understaffing their locations, such that there were too few employees on duty to handle the workload and attend to customers. Defendants' policies and/or practices resulted in a failure to provide Plaintiff and other aggrieved employees with adequate meal period coverage, and thus, Plaintiff and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiff and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Plaintiff worked straight through his meal periods due to the lack of coverage. Defendants did not compensate Plaintiff and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fifth, Defendants' company-wide timekeeping practices and/or policies did not permit employees, including Plaintiff and other aggrieved employees, to accurately track the start and end times of their meal periods or allow them to report a short, missed, or interrupted meal period. As stated, because Defendants frequently altered and/or falsified timesheets, Defendants, upon information and belief, would record that compliant meal periods were taken, even if that was not the case. Alternatively, Defendants implemented a company-wide practice and/or policy of automatically deducting meal periods from Plaintiff's and other aggrieved employees' time records. As a result, because Defendants recorded that 30-minute meal periods were taken, even when meal periods were short, missed, or interrupted, Plaintiff and other aggrieved employees were not paid for all hours worked.

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

Defendants' failure to pay Plaintiff and other aggrieved employees the balance of overtime compensation, as required by California law, violated the provisions of California Labor Code sections 510 and 1198. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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)(L) (defining "Hours Worked").

First, as set forth above, due to Defendants' restriction on overtime accrual, Defendants systematically failed to pay Plaintiff and other aggrieved employees for actual hours worked outside of their scheduled shifts, because these hours were not accurately recorded. As stated, Defendants' managers required employees to log out of the timekeeping system after their scheduled shifts ended and/or altered/falsified Plaintiff's and other aggrieved employees' timekeeping entries to reflect scheduled shift hours instead of actual hours worked. Thus, Defendants failed to compensate Plaintiff and other aggrieved employees fully for all hours worked. Further, Defendants had a company-wide "on-call" policy, whereby they required Plaintiff and other aggrieved employees to wait to be called by Defendants when scheduled for "on-call" or standby shifts. However, Defendants did not pay Plaintiff and other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed for their standby shift.

Second, due to Defendants' policies and/or practices of understaffing while assigning heavy workloads and failing to schedule meal periods, Plaintiff and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, upon information and belief, Defendants' management adjusted employee time records to reflect compliant meal periods and/or automatically deducted 30-minute meal periods from Plaintiff's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Defendants did not pay minimum wages for all hours worked by Plaintiff and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff 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. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 and IWC Wage Order 5-2001 – Failure to Provide Meal Periods</u>

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.

First, as stated above, on information and belief, Defendants had a company-wide policy and/or practice of understaffing their locations, which, combined with the assignment of heavy workloads and failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Plaintiff and other aggrieved employees from taking all timely, uninterrupted meal periods. As a result of this lack of meal period coverage, Plaintiff and other aggrieved employees were not always afforded thirty (30) minute meal periods during shifts when they were entitled to receive a meal period. For example, as stated, Plaintiff had to forgo and work through his meal periods.

Second, Defendants did not provide Plaintiff and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Plaintiff 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.

Third, as set forth above, Defendants' company-wide timekeeping practices and/or policies did not permit employees, including Plaintiff and other aggrieved employees, to accurately track the start and end times of their meal periods or allow them to report a short, missed, or interrupted meal period. As stated, because Defendants frequently altered and/or falsified timesheets, Defendants, upon information and belief, would record that compliant meal periods were taken, even if that was not the case. Alternatively, Defendants implemented a company-wide practice and/or policy of automatically deducting meal periods from Plaintiff's and other aggrieved employees' time records. Thus, Defendants systematically failed to correctly record meal periods.

At all times mentioned herein, Defendants knew or should have known that as a result of their policies, Plaintiff and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiff and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, as a result of Defendants' practice of requiring Plaintiff and other aggrieved employees to log into the timekeeping system using different employee I.D.s or timekeeping codes to make back-to-back shifts look like separate shifts to avoid paying overtime, Plaintiff and other aggrieved employees also did not receive meal period premiums for shifts they worked in excess of six (6) hours in one day and/or in excess of ten (10) hours in one day.

Moreover, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and other aggrieved employees did not receive premium pay for all missed, late, and interrupted meal periods.

Accordingly, Defendants failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 and IWC Wage Order 5-2001 – 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, Defendants regularly failed to authorize and permit Plaintiff 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, Defendants' company-wide practices, including understaffing and assigning heavy workloads, prevented Plaintiff and other aggrieved employees from being relieved of all duties to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, Defendants maintained a company-wide on-premises rest period policy, which effectively required that Plaintiff and other aggrieved employees remain on the work premises during their rest periods. Because Plaintiff 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, Defendants effectively maintained control over Plaintiff and other aggrieved employees during rest periods.

As a result of Defendants' practices and policies, Plaintiff and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Plaintiff had to forgo his rest periods altogether due to Defendants' expectation that employees work through their rest periods.

Defendants also have 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, Plaintiff and other aggrieved employees did not receive premium pay for all missed rest periods.

Accordingly, Defendants failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 and IWC Wage Order 5-2001 – 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. Defendants have not provided Plaintiff and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, Defendants knowingly and intentionally provided Plaintiff and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff 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 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).

Because Defendants did not record the time Plaintiff and other aggrieved employees spent working off-the-clock; underreported time worked by using alternative timekeeping codes, paying cash, and paying wages with checks from different business entities; 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 other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff 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).

In addition, Defendants failed to provide Plaintiff and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them. For example, Defendants did not provide Plaintiff and other aggrieved employees with wage statements when they paid them with cash in their attempt to avoid paying them overtime wages and/or meal and rest period premiums.

The wage statement deficiencies also included, 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 hours 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), Defendants willfully failed to maintain accurate payroll records for Plaintiff 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, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Plaintiff and other aggrieved employees, in violation of section

1198 and the applicable IWC Wage Order. Also, in light of Defendants' failure to provide Plaintiff and other aggrieved employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

Because Defendants failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Plaintiff 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, Plaintiff 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.

Plaintiff 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), and (k).

Violation of California Labor Code §§ 201-203 – Failure to Pay All Wages Due Upon Discharge or Quit

Labor Code § 201 requires that an employer pay all wages earned and unpaid to an employee immediately upon discharge of that employee. Labor Code § 202 requires that an employer pays all wages earned and unpaid not later than 72 hours after an employee quits. Labor Code § 203 authorizes an employee to recover penalties in an amount equal to the former employee's daily wages for up to 30 days if an employer willfully fails to pay any wages due to the employee at the time of discharge, or within 72 hours if the employee quits.

During the relevant time period, Defendants willfully failed to pay Plaintiff and other aggrieved employees who are no longer employed by Defendants 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 leaving their employment.

Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 204 and 210 – Failure to Pay All Wages Earned Twice During the Calendar Month

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, Defendants failed to pay Plaintiff and other aggrieved employees all wages owed 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.

Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, Defendants scheduled Plaintiff and other aggrieved employees to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Plaintiff and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, Defendants caused Plaintiff and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and IWC Wage Order 5-2001 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, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay Plaintiff and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

As stated, Defendants had a company-wide "on-call" policy, whereby they scheduled Plaintiff and other aggrieved employees to work "on-call," or on standby. When scheduled for an "on-call" or standby shift, Plaintiff and other aggrieved employees regularly presented themselves as ready for work by waiting for Defendants to call them before their scheduled standby shift and would await instructions on whether to report to the work premises. When this occurred, Defendants did not pay Plaintiff and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to Defendants' "on-call" policy and were ultimately not called.

Also, Defendants had a company-wide practice and/or policy of sending Plaintiff 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 Plaintiff and other aggrieved employees for half of their scheduled shift. Although Plaintiff and other aggrieved employees reported to work based on the schedule that was provided to them, Defendants would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, Defendants did not pay Plaintiff and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and IWC Wage Order 5-2001 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

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

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

Defendants willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, Plaintiff sometimes worked his usual opening shift in the morning, clocked out for more than an hour, and then returned to work in in the evening for another shift. When this occurred, Plaintiff's manager instructed him to clock back in using the "Banquet" timekeeping code to ensure that Defendants did not pay Plaintiff an additional hour at minimum wage.

Defendants' failure to provide Plaintiff and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violated California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and IWC Wage Order 5-2001 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.*

Defendants' restaurants and hotels are generally similar in their layout and design and there was space behind service desks and 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. Defendants could have provided other aggrieved employees with a seat or stool at their service desks and host stands, but instead denied employees seating and forced other aggrieved employees to stand throughout the day.

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

Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. Defendants' 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 Defendants' 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. Defendants' failure to provide suitable seating to other aggrieved employees violated California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and C IWC Wage Order 5-2001 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.*

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

Defendants 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, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of Defendants' 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. Defendants' failure to provide suitable seating to other aggrieved employees violated California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

<u>Violation of California Labor Code § 2802 – Unreimbursed Business Expenses</u>

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

First, during the relevant time period, Defendants required Plaintiff and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff purchased office supplies, including, but not limited to, pens and folders, because Defendants failed to provide him with the supplies which were necessary for him to complete his assigned duties.

Second, during the relevant time period, Defendants had a company-wide policy of requiring other aggrieved employees to wear uniform items. Due to the nature of the work they performed, on information and belief, other aggrieved employees had to wash their uniform items separately from their regular clothing and/or more frequently than they would otherwise do laundry, and incur expenses in doing so. Thus, Defendants failed to maintain the uniforms they required other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Defendants could have provided Plaintiff and/or other aggrieved employees with the actual equipment for use on the job, such as supplies/equipment and access to laundering services, or Defendants could have reimbursed employees for the costs of their supplies/equipment and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs onto Plaintiff and/or other aggrieved employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

Thus, Defendants had a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Plaintiff and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

We are prepared to move forward with the filing of a complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197.1, 1198, and 2802, and IWC Wage Order 5-2001 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole. If we do not receive notice from the LWDA that it intends to investigate the alleged violations, we will include PAGA causes of action under Labor Code § 2699 in the civil complaint.

Please feel free to contact me at any time should you have questions or require any additional information.

Sincerely,

DocuSigned by:

Mary Tanagho Ross

[redacted]

Mary Tanagho Ross
BET ZEDEK LEGAL SERVICES

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