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FILED
Superior Court of California
County of Los Angeles

08/01/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

Attorneys for Plaintiff(s),
OLGA SOTELO, and all others similarly situated
(Additional attorneys for Plaintiff(s) on next page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)**

OLGA SOTELO, on behalf of herself and all
others similarly situated, and the general public,
and an “aggrieved employee” on behalf of other
“aggrieved employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

Case No.: 23STCV12284

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
7. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED

Plaintiff(s),

vs.

FAR WEST RESTAURANT GROUP, LLC
(D/B/A WINGSTOP), a California limited
liability company and DOES 1–50, inclusive,

Defendant(s).



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1 Plaintiff, Olga Sotelo (hereafter “Plaintiff” or “Sotelo”), on behalf of herself and all others
2 similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Far West
9 Restaurant Group, LLC (D/B/A WingStop), a California limited liability company; and Does 1
through 50, inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated workers for unpaid wages, civil and statutory penalties, interest, and
12 related relief. These claims are based on Defendants’ failures to:

13 (A) Pay all wages, including minimum, regular, and overtime wages, earned
14 for all hours worked at the correct rates of pay;

15 (B) Provide all meal periods;

16 (C) Authorize and permit all rest breaks;

17 (D) Pay premium wages for unprovided meal periods;

18 (E) Pay premium wages for unprovided rest breaks;

19 (F) Indemnify for necessary work-related expenditures;

20 (G) Issue only accurate and complete itemized wage statements;

21 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
22 restitution, civil and statutory penalties, attorneys’ fees, costs, and related relief through this class
23 action.

24 **II. THE PARTIES**

25 3. Plaintiff Olga Sotelo is a resident of California. At all relevant times, Plaintiff was
26 an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an
27 “aggrieved employee” within the meaning of Labor Code § 2699(c).

28 4. Defendant Far West Restaurant Group, LLC (D/B/A WingStop) is a limited
liability company organized and existing under the laws of California and also a citizen of
California based on Plaintiff’s information and belief.



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1 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
2 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
3 is informed and believes and thereon alleges that said Defendants are legally responsible for the
4 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
5 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
6 when ascertained.

7 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters, or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
16 laws as alleged herein.

17 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
19 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
20 described class in accordance with applicable laws as alleged herein.

21 **III. CLASS ALLEGATIONS**

22 9. This action has been brought and may be maintained as a class action pursuant to
23 California Code of Civil Procedure section 382 because there is a well-defined community of
24 interest among the persons who comprise the readily ascertainable class defined below and
25 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
26 a class action.

27 10. **Class Definition:** The Class is defined as follows: All persons Defendants
28 employed in California as hourly, non-exempt employees, including but not limited to restaurant
workers, individuals performing work comparable to the aforementioned, compensated
comparably to the aforementioned, and individuals in similar positions at any time during the
period beginning four years prior to the filing of this action and ending on the date that final



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1 judgment is entered in this action (“Class” or “Class Members”).

2 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
3 right to amend or modify the class definition with greater specificity, by further division into
4 subclasses and/or by limitation to particular issues.

5 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
6 each individual Class Member is impractical. While Plaintiff does not currently know the exact
7 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
8 minimum required for numerosity under California laws.

9 13. **Commonality and Predominance:** Common questions of law and fact exist as
10 to all Class Members and predominate over any questions which affect only individual Class
11 Members. These questions include, but are not limited to:

12 A. Whether Defendants failed to pay all wages earned to Class Members for
13 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
14 premium, and rest period premium wages;

15 B. Whether Defendants failed to provide the Class Members with all meal
16 periods in compliance with California law;

17 C. Whether Defendants failed to authorize and permit the Class Members to
18 take all rest periods in compliance with California law;

19 D. Whether Defendants failed to indemnify the Class Members for the
20 reasonable expenses they incurred during the course of performing their duties;

21 E. Whether Defendants knowingly and intentionally failed to provide the
22 class with accurate and complete itemized wage statements;

23 F. Whether Defendants engaged in unfair competition within the meaning of
24 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

25 G. Whether Class Members are entitled to restitution of money or property
26 that Defendants may have acquired from them through alleged Labor Code violations.

27 14. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
28 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
Code, the Wage Order, and the Business and Professions Code.

15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative



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1 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
2 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
3 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
4 Members.

5 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
6 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
7 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
8 Plaintiff and absent Class Members.

9 17. **Superiority:** A class action is vastly superior to other available means for fair and
10 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
11 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
12 and efficiently prosecute their common claims in a single forum without the unnecessary
13 duplication of effort and expense that numerous individual actions would entail. In addition, the
14 monetary amounts due to many individual Class Members are likely to be relatively small and
15 would thus make it difficult, if not impossible, for individual Class Members to both seek and
16 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
17 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
18 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

19 **IV. STATEMENT OF FACTS**

20 18. The Wage Order applies to "all persons employed in the public housekeeping
21 industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The
22 Wage Order defines "Public Housekeeping Industry" to mean:

23 [A]ny industry, business, or establishment which provides meals, housing,
24 or maintenance services whether operated as a primary business or when
25 incidental to other operations in an establishment not covered by an industry
26 order of the Commission, and includes, but is not limited to the following:

- 27 (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch
28 counters, cafeterias, boarding houses, clubs, and all similar
establishments where food in either solid or liquid form is prepared
and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments
which prepare food for consumption on or off the premises



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1 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
2 Sotelo, and all of the Class Members were covered by the Wage Order because the Defendants
3 operated, and Sotelo and all of the Class Members worked for, one or more restaurants, lunch
4 counters, or box lunch services. Accordingly, Sotelo and all of the other Class Members are
5 entitled to the protections the Wage Order provides.

6 19. On approximately September 26, 2021, the Defendants began to employ Sotelo in
7 Compton in the position of hourly, non-exempt food worker. The Defendants continuously
8 employed her in that capacity continue to employ her.

9 20. At all relevant times, the Defendants issued wages to Sotelo and all of the other
10 Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all
11 relevant times, the Defendants classified Sotelo and all of the other Class Members as non-exempt
12 employees entitled to the protections of the Labor Code and the Wage Order.

13 21. At all relevant times, the Defendants failed to compensate Sotelo and all of the
14 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
15 Defendants required Plaintiff and all other Class Members to perform work before clocking-in
16 and after clocking-out. In addition, the Defendants forced Plaintiff and all other Class Members
17 to wait in line to clock-in and clock-out, shortening the time of their meal and rest breaks. The
18 Defendants also required Plaintiff and all other Class Members to attend unpaid, off-the-clock
19 meetings and trainings. Prior to clocking-in, the Defendants required Plaintiff and all other Class
20 Members to unlock the front door, turn on the lights, turn off the security system, and conduct a
21 thorough walk-through to ensure the restaurant was safe to open. After clocking-out, the
22 Defendants expected Plaintiff and all other Class Members to arm the alarm system, turn off all
23 lights, and to lock the front doors. During meal and rest periods, the Defendants required Plaintiff
24 and all other Class Members to monitor the restaurant's point-of-sale system and perform work-
25 related tasks to ensure orders were processed in a timely manner. Due to the policies of the
26 Defendants and chronic understaffing, the Defendants forced Plaintiff and all other Class
27 Members to work hours they were not compensated for.

28 22. At all relevant times, the Defendants failed to compensate Sotelo and all of the
other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
in a week, and for the first eight hours of the seventh day of the workweek. The Defendants



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1 required Plaintiff and all other Class Members to perform work before clocking-in and after
2 clocking-out. In addition, the Defendants forced Plaintiff and all other Class Members to wait in
3 line to clock-in and clock-out, shortening the time of their meal and rest breaks. The Defendants
4 also required Plaintiff and all other Class Members to attend unpaid, off-the-clock meetings and
5 trainings. Prior to clocking-in, the Defendants required Plaintiff and all other Class Members to
6 unlock the front door, turn on the lights, turn off the security system, and conduct a thorough
7 walk-through to ensure the restaurant was safe to open. After clocking-out, the Defendants
8 expected Plaintiff and all other Class Members to arm the alarm system, turn off all lights, and
9 to lock the front doors. During meal and rest periods, the Defendants required Plaintiff and all
10 other Class Members to monitor the restaurant's point-of-sale system and perform work-related
11 tasks to ensure orders were processed in a timely manner. Due to the policies of the Defendants
12 and chronic understaffing, the Defendants forced Plaintiff and all other Class Members to work
13 hours they were not compensated for.

14 23. At all relevant times, the Defendants failed to provide Sotelo and all of the other
15 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required
16 Plaintiff and all other Class Members to work during their meal periods. The Defendants required
17 Plaintiff and all other Class Members to clock-in and clock-out for each meal period. The
18 Defendants forced Plaintiff and all other Class Members to wait in line to clock-in and clock-out,
19 shortening the time of their meal period. During meal periods, the Defendants required Plaintiff
20 and all other Class Members to monitor the restaurant's point-of-sale system and perform work-
21 related tasks to ensure orders were processed in a timely manner. Due to these policies and
22 chronic understaffing, the Defendants forced Plaintiff and all other Class Members to work
23 through their meal periods. The Defendants also failed to pay premium wages for days on which
24 it failed to provide Sotelo and all of the other Class Members with meal periods as required by
25 law.

26 24. At all relevant times, the Defendants failed to authorize and permit Sotelo and all
27 of the other Class Members to take ten-minute, off-duty rest breaks every four hours worked or
28 major portion thereof. Defendants forced Plaintiff and all other Class Members to wait in line to
clock-in and clock-out, shortening the time of their rest breaks. Due to these policies and chronic
understaffing, the Defendants forced Plaintiff and all other Class Members to work through their
rest breaks. The Defendants also failed to pay premium wages for days on which it failed to



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1 authorize and permit Sotelo and all of the other Class Members to take rest breaks as required by
2 law.

3 25. At all relevant times, the Defendants required Sotelo and all of the other Class
4 Members to incur certain business expenses in the course of performing their duties. The
5 Defendants required Sotelo and all of the other Class Members to supply mobile phones, telecom,
6 and equipment to perform their job duties. However, the Defendants did not provide these items
7 and did not reimburse Sotelo and the other Class Members for these items. The Defendants
8 required Plaintiff and all other Class Members to utilize group texts to discuss scheduling and
9 other work-related matters. Additionally, the Defendants relied on Plaintiff and all other Class
10 Members' mobile phones and mobile phone plans for these work-related communications. The
11 Defendants did not provide an alternative means of communicating about work-related concerns
12 and did not reimburse Plaintiff and all other Class Members for the use of their personal mobile
13 phones nor their mobile phone plans. Finally, the Defendants required Plaintiff and all other Class
14 Members to use pens and markers to perform their job duties. However, the Defendants did not
15 provide pens or markers and did not reimburse Plaintiff and all other Class Members for
16 providing their own.

17 26. At all relevant times, the Defendants failed to issue to Sotelo and all of the other
18 Class Members complete and accurate wage statements that state all hours worked at the correct
19 rates of pay and all wages earned. The Defendants knowingly and intentionally failed to state on
20 the wage statements they issued to Sotelo and all of the other Class Members the unpaid wages
21 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
22 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
23 wages earned and related information.

24 27. At all relevant times, the Defendants also failed to timely pay Sotelo and all of the
25 other Class Members all earned wages as described above during employment.

26 28. At all relevant times, the Defendants failed to maintain accurate employee records
27 of Sotelo and all of the other Class Members.

28 29. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off-duty meal periods;
- B. Not authorized and permitted to take all rest break periods;



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1 C. Not paid one hour's pay for each workday in which Defendants failed to
2 authorize and permit them to take one or more timely rest periods;

3 D. Not paid one hour's pay for each workday in which Defendants failed to
4 provide them with one or more timely meal periods;

5 E. Not paid all wages earned, including, but not limited to, minimum, regular,
6 and overtime wages for work performed while clocked out;

7 F. Not indemnified for all necessary business expenditures incurred during
8 the discharge of their duties;

9 G. Not provided with accurate and complete wage statements; and

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY ALL WAGES AT THE CORRECT RATES**

12 **Lab. Code §§ 510, 1194, 1197, and 1198**

13 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

14 30. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 31. At all relevant times, Plaintiff and the Class Members have been non-exempt
16 employees entitled to the protections of both the Labor Code and the Wage Order.

17 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
18 **THE CORRECT RATES OF PAY**

19 32. Section 2 of the Wage Order defines "hours worked" as "the time during which
20 an employee is subject to the control of an employer, and includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so."

22 33. Section 3 of the Wage Order states:

23 **(A) Daily Overtime - General Provisions**

- 24 (1) The following overtime provisions are applicable to
25 employees 18 years of age or over and to employees 16 or
26 17 years of age who are not required by law to attend school
27 and are not otherwise prohibited by law from engaging in the
28 subject work. Such employees shall not be employed more
than eight (8) hours in any workday or more than 40 hours
in any workweek unless the employee receives one and one-
half (1½) times such employee's regular rate of pay for all
hours worked over 40 hours in the workweek. Eight (8)
hours of labor constitutes a day's work. Employment beyond
eight (8) hours in any workday or more than six (6) days in



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any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

34. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

35. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

36. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

37. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked



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1 during a payroll period.

2 38. Labor Code section 1198 makes it unlawful for an employer to employ an
3 employee under conditions that violate the Wage Order.

4 39. In conjunction, these provisions of the Labor Code require employers to pay non-
5 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
6 worked, including unrecorded hours when the employer knew or reasonably should have known
7 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
8 Cal.4th 575, 585.)

9 40. The Defendants required Plaintiff and all other Class Members to perform work
10 before clocking-in and after clocking-out. In addition, the Defendants forced Plaintiff and all
11 other Class Members to wait in line to clock-in and clock-out, shortening the time of their meal
12 and rest breaks. The Defendants also required Plaintiff and all other Class Members to attend
13 unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Defendants required
14 Plaintiff and all other Class Members to unlock the front door, turn on the lights, turn off the
15 security system, and conduct a thorough walk-through to ensure the restaurant was safe to open.
16 After clocking-out, the Defendants expected Plaintiff and all other Class Members to arm the
17 alarm system, turn off all lights, and to lock the front doors. During meal and rest periods, the
18 Defendants required Plaintiff and all other Class Members to monitor the restaurant's point-of-
19 sale system and perform work-related tasks to ensure orders were processed in a timely manner.
20 Due to the policies of the Defendants and chronic understaffing, the Defendants forced Plaintiff
21 and all other Class Members to work hours they were not compensated for.

22 41. At all relevant times during the applicable limitations period, Defendants failed to
23 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
24 minimum, regular, and overtime wages for all minimum, regular, and overtime hours,
25 respectively, that they worked at the correct rates of pay.

26 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
27 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
28 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
rates of pay as required by California law.

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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7 and 512

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

43. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

44. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

45. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. 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.

46. In relevant part, California Labor Code § 512 states:

An employer shall 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

47. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(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 employee and the employer. 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



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1 nature of the work prevents an employee from being relieved of all
2 duty and when by written agreement between the parties an on-the-
3 job paid meal period is agreed to. The written agreement shall state
4 that the employee may, in writing, revoke the agreement at any time.

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

10 48. In relevant part, California Labor Code § 226.7 states:

11 (b) An employer shall not require an employee to work during a meal
12 or rest period mandated pursuant to an applicable statute, or
13 applicable regulation, standard, or order of the Industrial Welfare
14 Commission, the Occupational Safety and Health Standards Board,
15 or the Division of Occupational Safety and Health.

16 (c) If an employer fails to provide an employee a meal period or rest
17 period in accordance with a state law, including, but not limited to,
18 an applicable statute or applicable regulation, standard, or order of
19 the Industrial Welfare Commission, the Occupational Safety and
20 Health Standards Board, or the Division of Occupational Safety and
21 Health, the employer shall pay the employee one additional hour of
22 pay at the employee's regular rate of compensation for each work
23 day that the meal or rest period is not provided.

24 49. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
25 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
26 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
27 to a second 30-minute meal period when they worked more than 10 hours in a workday.

28 50. The Defendants required Plaintiff and all other Class Members to work during
their meal periods. The Defendants required Plaintiff and all other Class Members to clock-in
and clock-out for each meal period. The Defendants forced Plaintiff and all other Class Members
to wait in a line to clock-in and clock-out, shortening the time of their meal period. During meal
periods, the Defendants required Plaintiff and all other Class Members to monitor the restaurant's
point-of-sale system and perform work-related tasks to ensure orders were processed in a timely
manner. Due to these policies and chronic understaffing, the Defendants forced Plaintiff and all
other Class Members to work through their meal periods. The Defendants also failed to pay
premium wages for days on which it failed to provide Sotelo and all of the other Class Members



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1 with meal periods as required by law.

2 51. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
3 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
4 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
5 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
6 Members with timely meal periods.

7 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
9 which resulted in Defendants not providing the and the Class Members with all off-duty meal
10 periods required by California law.

11 53. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
12 suffered damages in amounts subject to proof to the extent they were not paid additional wages
13 owed for all meal periods not provided to them.

14 54. By reason of the above, Plaintiff and the Class Members are entitled to premium
15 wages for workdays in which one or more meal periods were not provided to them pursuant to
16 California Labor Code § 226.7.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

19 **Lab. Code § 226.7**

20 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

21 55. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

22 56. At all relevant times during the applicable limitations period, Plaintiff and the
23 Class Members have been employees of Defendants and entitled to the benefits and protections
24 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

25 57. In relevant part, California Labor Code § 1198 states:

26 The maximum hours of work and the standard conditions of labor fixed by
27 the commission shall be the maximum hours of work and the standard
28 conditions of labor for employees. 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.

58. In relevant part, Section 12 of the Wage Order states:



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Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(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 compensation for each work day that the rest period is not provided.

59. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or rest period is not provided.

60. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

61. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order. At all relevant times, the Defendants failed to authorize and permit Sotelo and all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Defendants forced Plaintiff and all other Class Members to wait in line



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1 to clock-in and clock-out, shortening the time of their rest breaks. Due to these policies and
2 chronic understaffing, the Defendants forced Plaintiff and all other Class Members to work
3 through their rest breaks. The Defendants also failed to pay premium wages for days on which it
4 failed to authorize and permit Sotelo and all of the other Class Members to take rest breaks as
5 required by law.

6 62. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
8 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
9 Plaintiff and the other Class Members to take timely rest periods.

10 63. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
11 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
12 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
13 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
14 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they
15 failed to authorize and permit them to take 10-minute rest periods every four hours worked or
16 major fraction thereof.

17 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times
18 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
19 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
20 take all rest breaks required by California law.

21 65. Defendants failed to provide Plaintiff with all required rest breaks in accordance
22 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
23 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
24 which resulted in Defendants not providing the Class Members with all rest breaks required by
25 California law.

26 66. Defendants failed to pay Plaintiff the additional wages required by California
27 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
28 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing
the Class Members with additional wages for all rest breaks not provided to them as required by
California Labor Code § 226.7.



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1 67. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
2 suffered damages in amounts subject to proof to the extent they were not paid additional wages
3 owed for all rest breaks not provided to them.

4 68. By reason of the above, Plaintiff and the Class Members are entitled to premium
5 wages for workdays in which one or more rest breaks were not provided to them pursuant to
6 California Labor Code § 226.7.

7 **FOURTH CAUSE OF ACTION**

8 **FAILURE TO INDEMNIFY**

9 **Lab. Code § 2802**

10 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

11 69. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

12 70. In pertinent part, California Labor Code § 2802(a) states: "An employer shall
13 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
14 direct consequence of the discharge of his or her duties."

15 71. California Labor Code § 1198 prohibits employers from employing their
16 employees under conditions prohibited by the Wage Order.

17 72. At all relevant times, Defendants required Plaintiff and the Class Members to incur
18 certain business expenses in the course of performing their duties.

19 73. As described above, the Defendants required Sotelo and all of the other Class
20 Members to incur certain business expenses in the course of performing their duties. The
21 Defendants required Sotelo and all of the other Class members to supply mobile phones, telecom,
22 and equipment to perform their job duties. However, the Defendants did not provide these items
23 and did not reimburse Sotelo and the other Class members for these items. The Defendants
24 required Plaintiff and all other Class Members to utilize group texts to discuss scheduling and
25 other work-related matters. Additionally, the Defendants relied on Plaintiff and all other Class
26 Members' mobile phones and mobile phone plans for these work-related communications. The
27 Defendants did not provide an alternative means of communicating about work-related matters
28 and did not reimburse Plaintiff and all other Class Members for the use of their personal mobile
phones nor their mobile phone plans. Finally, the Defendants required Plaintiff and all other Class
Members to use pens and markers to perform their job duties. However, the Defendants did not
provide pens or markers and did not reimburse Plaintiff and all other Class Members for



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1 providing their own.

2 74. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
4 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
5 during the course of performing their duties.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

8 **Lab. Code § 226**

9 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

10 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
11 **STATEMENTS**

12 75. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 76. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
14 entitled to receive semi-monthly, or at the time of each payment of wages, an accurate itemized
15 statement showing:

16 A. Gross wages earned;

17 B. Total hours worked by the employee, except for any employee whose
18 compensation is solely based on a salary and who is exempt from payment of overtime under
19 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

20 C. The number of piece rate units earned and any applicable piece rate if the
21 employee is paid on a piece-rate basis;

22 D. All deductions, provided that all deductions made on written orders of the
23 Employee may be aggregated and shown as one item;

24 E. Net wages earned;

25 F. The inclusive dates of the period for which the employee is paid;

26 G. The name of the employee and his or her social security number, except
27 that by January 1, 2008, only the last four digits of his or her social security number or an
28 employee identification number other than a social security number may be shown on the
itemized statement;

H. The name and address of the legal entity that is the employer; and

I. All applicable hourly rates in effect during the pay period and the



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1 corresponding number of hours worked at each hourly rate by the employee.

2 77. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
3 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury
4 if the employer fails to provide accurate and complete information as required by California
5 Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage
6 statement alone one or more of the following:

7 A. The amount of the gross wages or net wages paid to the employee during
8 the pay period or any of the other information required to be provided on the itemized wage
9 statement pursuant to California Labor Code § 226(a);

10 B. Which deductions the employer made from gross wages to determine the
11 net wages paid to the employee during the pay period;

12 C. The name and address of the employer and, if the employer is a farm labor
13 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
14 and address of the legal entity that secured the services of the employer during the pay period;

15 D. The name of the employee and only the last four digits of his or her social
16 security number or an employee identification number other than a social security number; and

17 E. The number of piece-rate units earned and the piece rate.

18 78. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
19 means a reasonable person would be able to readily ascertain the information without reference
20 to other documents or information.

21 79. As alleged herein, at all relevant times during the applicable limitations period,
22 Defendants violated California Labor Code section 226 because they did not properly and
23 accurately itemize each employee’s gross wages earned, net wages earned, the total hours
24 worked, the corresponding number of hours worked at each rate by the employee and other
25 requirements of California Labor Code section 226. Defendants failed to state in the wage
26 statements they issued to Plaintiff and the other Class Members all their hours worked and wages
27 earned, including, but not limited to, regular and overtime wages for work they performed off-
28 the-clock (as described above). Defendants knowingly and intentionally did not issue either as a
detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
wages are paid by personal check or cash, statements to Plaintiff and the Class Members that
state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal



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1 period premium wages earned, and all rest break premium wages earned.

2 80. Defendants' failure to provide Plaintiff and the other Class Members with accurate
3 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
4 the other Class Members with accurate wage statements but intentionally provided wage
5 statements that Defendants knew were not accurate.

6 81. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
8 wage statements were violated and they were misled about the amount of wages they had actually
9 earned and were owed. In addition, the absence of accurate information on their wage statements
10 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
11 and mathematical computations to determine the amounts of wages owed, has caused difficulty
12 and expense in attempting to reconstruct time and pay records and/or has led to the submission
13 of inaccurate information about wages to state and federal government agencies. Further, Plaintiff
14 and the other Class Members were not able to ascertain from the wage statements whether
15 Defendants complied with their obligations under California Labor Code section 226(a).

16 **SEVENTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

19 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

20 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 83. At all relevant times during the applicable limitations period, Plaintiff and the
22 Class Members have been employees of Defendants and entitled to the benefits and protections
23 of the Business and Professions Code §§ 17200, *et seq.*

24 84. The unlawful conduct of Defendants alleged herein amount to and constitutes
25 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
26 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
27 gained a competitive advantage over other comparable companies doing business in California
28 that comply with their legal obligations to compensate employees for all earned wages.

85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
Members were deprived of minimum wages, regular wages, overtime wages, missed meal period



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1 premium wages, missed rest period premium wages, phone expenses, telecom expenses,
2 reimbursements owed, and comparable money and property.

3 86. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
4 Class Members are entitled to restitution of all monies rightfully belonging to them that
5 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
6 practices.

7 87. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
8 connection with their unfair competition claims pursuant to California Code of Civil Procedure
9 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

10 **EIGHTH CAUSE OF ACTION**

11 **CIVIL PENALTIES**

12 **Lab.Code §§ 2698, et seq.**

13 **(By Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California,**
14 **against all Defendants)**

15 88. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 89. The "Aggrieved Employees" are all members of the Class defined above who
17 Defendants employed during the period beginning May 26, 2022, and ending on the date that
18 final judgment is entered in this action.

19 90. Labor Code § 204 states:

20 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
21 204.1, or 204.2, earned by any person in any employment are due
22 and payable twice during each calendar month, on days designated
23 in advance by the employer as the regular paydays. Labor
24 performed between the 1st and 15th days, inclusive, of any calendar
25 month shall be paid for between the 16th and the 26th day of the
26 month during which the labor was performed, and labor performed
27 between the 16th and the last day, inclusive, of any calendar month,
28 shall be paid for between the 1st and 10th day of the following
month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of
subdivision (a) of Section 226 relating to total hours worked by the



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employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

91. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

92. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

93. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

94. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 221, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each subsequent violation (penalty amounts established by California Labor Code



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1 § 225.5).

2 C. For violations of California Labor Code § 226(a), two hundred fifty
3 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
4 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
5 established by California Labor Code § 226.3).

6 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
7 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
8 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
9 established by California Labor Code § 558).

10 E. For violations of California Labor Code § 1197, one hundred dollars
11 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
12 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
13 pay period (regardless of whether the initial violations were intentionally committed) (penalty
14 amounts established by California Labor Code § 1197.1).

15 F. For violations of California Labor Code §§ 201, 202, 203, 221, 226.7,
16 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay
17 period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee
18 per pay period for each subsequent violation (penalty amounts established by California Labor
19 Code § 2699(f)(2)).

20 95. Plaintiff has complied with the procedures for bringing suit specified in
21 California Labor Code § 2699.3. By letter dated May 26, 2023, Plaintiff filed written notice
22 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
23 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
24 to have been violated, including the facts and theories to support the alleged violations. A true
25 and correct copy of the notice to the LWDA dated May 26, 2023 is attached as Exhibit A.
26 Plaintiff submitted her LWDA notices with a fee in the amount of \$75.00. The LWDA has failed
27 to take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
28 anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not
intend to investigate these allegations.

96. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in



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connection with their claims for civil penalties.

V. PRAYER FOR RELIEF

97. WHEREFORE, Plaintiff, on behalf of herself, the State of California, and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff's claims for violations of California law;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Unpaid wages, including minimum, regular, overtime, missed meal period, missed rest period;

E. Liquidated damages;

F. Civil Penalties;

G. Statutory penalties, including waiting time penalties;

H. Restitution;

I. Declaratory relief;

J. Actual damages;

K. Pre-judgment interest;

L. Costs of suit;

M. Reasonable attorneys' fees; and

N. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 1, 2023

By: 

DAVID G. SPIVAK,
Attorneys for Plaintiff(s), OLGA
SOTELO, and all others similarly
situated



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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 26, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Olga Sotelo / Far West Restaurant Group

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Olga Sotelo (hereafter “Sotelo” or “Complainant”) provides notice that Far West Restaurant Group, LLC (D/B/A WingStop), a California limited liability company, and related entities (collectively “the Far West Restaurant Employers” or “the Employers”) violated her rights and those of all other individuals the Far West Restaurant Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including but not limited to restaurant workers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 204, 226, 226.7, 510, 512, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Sotelo hereby provides this notice to the Labor & Workforce Development Agency and the Far West Restaurant Employers and their agents and representatives.

At all relevant times, the Far West Restaurant Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Sotelo and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

///

Statement of Facts

On approximately September 26, 2021, the Far West Restaurant Employers began to employ Sotelo in Compton in the position of hourly, non-exempt food worker. The Far West Restaurant Employers continuously employed her in that capacity and continue to employ her.

At all relevant times, the Far West Restaurant Employers issued wages to Sotelo and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Far West Restaurant Employers classified Sotelo and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to perform work before clocking-in and after clocking-out. In addition, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in and clock-out, shortening the time of their meal and rest breaks. The Far West Restaurant Employers also required Sotelo and all other Aggrieved Employees to attend unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to unlock the front door, turn on the lights, turn off the security system, and conduct a thorough walk-through to ensure the restaurant was safe to open. After clocking-out, the Far West Restaurant Employers expected Sotelo and all other Aggrieved Employees to arm the alarm system, turn off all lights, and to lock the front doors. During meal and rest periods, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to monitor the restaurant's point-of-sale system and perform work-related tasks to ensure orders were processed in a timely manner. Due to the policies of the Far West Restaurant Employers and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to work hours they were not compensated for.

The Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees

to perform work before clocking-in and after clocking-out. In addition, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in and clock-out, shortening the time of their meal and rest breaks. The Far West Restaurant Employers also required Sotelo and all other Aggrieved Employees to attend unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to unlock the front door, turn on the lights, turn off the security system, and conduct a thorough walk-through to ensure the restaurant was safe to open. After clocking-out, the Far West Restaurant Employers expected Sotelo and all other Aggrieved Employees to arm the alarm system, turn off all lights, and to lock the front doors. During meal and rest periods, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to monitor the restaurant's point-of-sale system and perform work-related tasks to ensure orders were processed in a timely manner. Due to the policies of the Far West Restaurant Employers and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to work hours they were not compensated for.

At all relevant times, the Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to work during their meal periods. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to clock-in and clock-out for each meal period. The Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in and clock-out, shortening the time of their meal period. During meal periods, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to monitor the restaurant's point-of-sale system and perform work-related tasks to ensure orders were processed in a timely manner. Due to these policies and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to work through their meal periods. The Far West Restaurant Employers also failed to pay premium wages for days on which they failed to provide Sotelo and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Far West Restaurant Employers failed to authorize and permit Sotelo and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in

and clock-out, shortening the time of their rest breaks. Due to these policies and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to work through their rest breaks. The Far West Restaurant Employers also failed to pay premium wages for days on which they failed to authorize and permit Sotelo and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Far West Restaurant Employers required Sotelo and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Far West Restaurant Employers required Sotelo and all of the other Aggrieved Employees to supply mobile phones, telecom, and equipment to perform their job duties. However, the Far West Restaurant Employers did not provide these items and did not reimburse Sotelo and the other Aggrieved Employees for these items. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to utilize group texts to discuss scheduling and other work-related matters. Additionally, the Far West Restaurant Employers relied on Sotelo and all other Aggrieved Employees' mobile phones and mobile phone plans for these work-related communications. The Far West Restaurant Employers did not provide an alternative means of communicating about work-related concerns and did not reimburse Sotelo and all other Aggrieved Employees for the use of their personal mobile phones nor their mobile phone plans. Finally, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to use pens and markers to perform their job duties. However, the Far West Restaurant Employers did not provide pens or markers and did not reimburse Sotelo and all other Aggrieved Employees for providing their own.

At all relevant times, the Far West Restaurant Employers failed to issue to Sotelo and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay and all wages earned. The Far West Restaurant Employers knowingly and intentionally failed to state on the wage statements they issued to Sotelo and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

The Far West Restaurant Employers also failed to timely pay Sotelo and all of the other Aggrieved Employees all earned wages as described above during employment.

The Far West Restaurant Employers failed to maintain accurate employee records of Sotelo and all of the other Aggrieved Employees.

For the reasons stated herein, Sotelo alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Far West Restaurant Employers failed to pay Sotelo and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Far West Restaurant Employers failed to authorize and permit Sotelo and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees at one hour's pay for each day in which the Far West Restaurant Employers failed to provide them with one or more meal periods as required by law;
- (e) The Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees at one hour's pay for each day in which the Far West Restaurant Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Far West Restaurant Employers failed to indemnify Sotelo and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Far West Restaurant Employers knowingly and intentionally failed to provide Sotelo and all of the other Aggrieved Employees with accurate wage statements;

- (h) The Far West Restaurant Employers willfully failed to timely pay Sotelo and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Far West Restaurant Employers;
- (i) The Far West Restaurant Employers failed to maintain accurate employment records pertaining to Sotelo and all of the other Aggrieved Employees.

Accordingly, Sotelo now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Far West Restaurant Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean:

[A]ny industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either solid or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Far West Restaurant Employers, Sotelo, and all of the Aggrieved Employees were covered by the Wage Order because the Far West Restaurant Employers operated, and Sotelo, and all of the Aggrieved Employees, worked for one or more restaurants, lunch

counters, or box lunch services. Accordingly, Sotelo and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Pay Wages for All Hours Worked at the Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“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, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that

employees were working during those hours. See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to perform work before clocking-in and after clocking-out. In addition, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in and clock-out, shortening the time of their meal and rest breaks. The Far West Restaurant Employers also required Sotelo and all other Aggrieved Employees to attend unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to unlock the front door, turn on the lights, turn off the security system, and conduct a thorough walk-through to ensure the restaurant was safe to open. After clocking-out, the Far West Restaurant Employers expected Sotelo and all other Aggrieved Employees to arm the alarm system, turn off all lights, and to lock the front doors. During meal and rest periods, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to monitor the restaurant's point-of-sale system and perform work-related tasks to ensure orders were processed in a timely manner. Due to the policies of the Far West Restaurant Employers and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to work hours they were not compensated for.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App.4th 893, 904-905. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Far West Restaurant Employers, Sotelo and all of the other Aggrieved Employees earned rest period premium wages and meal period premium wages during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Far West Restaurant Employers failed to pay to Sotelo and all of the other Aggrieved Employees rest period premium wages, meal period premium wages and overtime premium pay on such rest period premium wages, meal period premium wages, and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Sotelo now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“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, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (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.
- (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 employee’s regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with all timely meal periods. The Far West Restaurant Employers denied Sotelo and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to work during their meal periods. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to clock-in and clock-out for each meal period. The Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in and clock-out, shortening the time of their meal period. During meal periods, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to monitor the restaurant's point-of-sale system and perform work-related tasks to ensure orders were processed in a timely manner. Due to these policies and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to work through their meal periods. Furthermore, the Far West Restaurant Employers failed to pay premium wages for days on which they failed to provide Sotelo and all of the other Aggrieved Employees with timely meal periods. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Far West Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“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, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily

work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (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 compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Far West Restaurant Employers failed to authorize and permit Sotelo and all of the other Aggrieved Employees to take ten-minute, duty-free rest breaks every four hours worked or major fraction thereof. The Far West Restaurant Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees to wait in line to clock-in and clock-out, shortening the time of their rest breaks. Due to these policies and chronic understaffing, the Far West Restaurant Employers forced Sotelo and all other Aggrieved Employees

to work through their rest breaks. Moreover, the Far West Restaurant Employers failed to pay Sotelo and all of the other Aggrieved Employees premium wages on workdays the Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Far West Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “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.”

Additionally, the Wage Order states,

- (A) When 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.
...
- (B) When 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.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Far West Restaurant Employers required Sotelo and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Far West Restaurant Employers required Sotelo and all of the other Aggrieved Employees to supply mobile phones, telecom, and equipment to perform their job duties. However, the Far West Restaurant Employers did not provide these items and did not reimburse Sotelo and the other Aggrieved Employees for these items. The Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to utilize group texts to discuss scheduling and other work-related matters. Additionally, the Far West Restaurant Employers relied on Sotelo and all other Aggrieved Employees' mobile phones and mobile phone plans for these work-related communications. The Far West Restaurant Employers did not provide an alternative means of communicating about work-related concerns and did not reimburse Sotelo and all other Aggrieved Employees for the use of their personal mobile phones nor their mobile phone plans. Finally, the Far West Restaurant Employers required Sotelo and all other Aggrieved Employees to use pens and markers to perform their job duties. However, the Far West Restaurant Employers did not provide pens or markers and did not reimburse Sotelo and all other Aggrieved Employees for providing their own. Accordingly, Sotelo seeks civil penalties for these Labor Code violations that the Far West Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)) and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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 hourly rate by the employee.

At all relevant times during the applicable limitations period, the Far West Restaurant Employers violated Labor Code section 226 because they did not properly and

accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Far West Restaurant Employers failed to state in the wage statements they issued to Sotelo and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock (as described above). The Far West Restaurant Employers knowingly and intentionally failed to state on the wage statements they issued to Sotelo and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other required information.

Accordingly, Sotelo seeks civil penalties for the Labor Code violations that the Far West Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees for wages earned, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and other compensation, at the intervals stated above. As a result, the Far West Restaurant Employers failed to timely pay all earned wages

due during employment within the time periods set by Labor Code section 204. Accordingly, Sotelo now seeks civil penalties for the Labor Code violations that the Far West Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect

records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
- (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Far West Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all

minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. As a result, the Far West Restaurant Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Sotelo and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Sotelo seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5) and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Olga Sotelo will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Olga Sotelo

Benjamin J. Smith, Esq.

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LWDA / The Far West Restaurant Employers

Re: Olga Sotelo

May 26, 2023

Page 22 of 22

Far West Restaurant Group, LLC (D/B/A WingStop)

c/o Ralph Winter, Esq.

Snell & Wilmer

600 Anton Blvd., Ste 1400

Costa Mesa, CA 92626-7689

rwinter@swlaw.com

1 PROOF OF SERVICE

2
3 State of California,
4 County of Los Angeles

5 1. I am a citizen of the United States and am employed in the County
6 of Los Angeles, State of California. I am over the age of 18 years, and not a
party to the within action. My business address is 1801 Century Park East,
25th Fl, Los Angeles, CA 90067.

7 2. I am familiar with the practice of The Spivak Law Firm, for
8 collection and processing of correspondence for mailing with the United States
Postal Service. It is the practice that correspondence is deposited with the
United States Postal Service the same day it is submitted for mailing.

9
10 On Tuesday, August 01, 2023, I served the foregoing document described
as **FIRST AMENDED COMPLAINT** on interested parties by electronic mail, addressed
as follows:

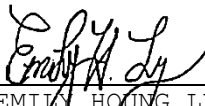
11
12 **Theresa A. Kading, Esq.**
13 **Kading Briggs LLP**
14 **100 Spectrum Center Drive, Suite 800**
15 **Irvine, CA 92618**
tkading@kadingbriggs.com
vbeechler@kadingbriggs.com

16 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
17 electronic service addresses listed above from my electronic service address
emily@spivaklaw.com.

18 EXECUTED on Tuesday, August 01, 2023, at Los Angeles, California.

19 XXXX (State) I declare under penalty of perjury under the laws of the State
20 of California that the above is true and correct.

21 ____ (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

22
23 
24 _____
25 EMILY HONG LY



26 SPIVAK LAW
27 EMPLOYEE RIGHTS

28 Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
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