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OLGA SOTELO, and all others similarly situated
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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,

Plaintiff(s),

vs.

FAR WEST RESTAURANT GROUP, LLC
(D/B/A WINGSTOP), a California limited
liability company; ZION RESTAURANT
GROUP, LLC (D/B/A WINGSTOP), a
California limited liability company; and DOES
2–50, inclusive,

Defendant(s).

Case No.: 23STCV12284

CLASS ACTION

**[PROPOSED] SECOND 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 §§ 221, 223, 510, 1194, 1194.2, 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 Pay Reporting Time Pay (Lab. Code § 1198);
5. Failure to Pay Vested Vacation Time at Separation (Lab. Code § 227.3);
6. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
7. Paid Sick Leave Violations (Lab. Code § 246);
8. Recordkeeping Violations (Lab. Code §§ 432, 1174, 1198, and 1198.5);
9. Failure to Issue Proper Payment (Lab.



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- Code §§ 212, 213);
- 10. Failure to Provide Required Notices (Lab. Code § 2810.5);
 - 11. Wage Statement Penalties (Lab. Code § 226);
 - 12. Failure to Timely Pay Wages During Employment (Lab. Code § 204);
 - 13. Failure to Pay All Wages Due Upon Separation (Lab. Code §§ 201, 202, and 203);
 - 14. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
 - 15. Civil Penalties (Lab. Code §§ 2698, *et seq.*)

JURY TRIAL DEMANDED



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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 (“Far West”);
10 Zion Restaurant Group, LLC (D/B/A WingStop), a California limited liability company (“Zion”);
and Does 2 through 50, inclusive (collectively “Defendants”).

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

14 (A) Pay all wages, including minimum, regular, and overtime wages, earned
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
“aggrieved employee” within the meaning of Labor Code § 2699(c).

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



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California based on Plaintiff's information and belief.

5. Defendant Zion 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.

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

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

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

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

III. CLASS ALLEGATIONS

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

11. **Class Definition:** The Class is defined as follows: All persons Defendants



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1 employed in California as hourly, non-exempt employees, including but not limited to restaurant
2 workers, individuals performing work comparable to the aforementioned, compensated
3 comparably to the aforementioned, and individuals in similar positions at any time during the
4 period beginning four years prior to the filing of this action and ending on the date that final
5 judgment is entered in this action (“Class” or “Class Members”).

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

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

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

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

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

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

23 D. Whether Defendants failed to provide the Class Members with reporting
24 time pay as required by California law;

25 E. Whether Defendants failed to pay the Class Members the value of their
26 vested vacation time at separation;

27 F. Whether Defendants failed to indemnify the Class Members for the
28 reasonable expenses they incurred during the course of performing their duties;

G. Whether Defendants failed to provide Class Members with paid sick leave,
failed to pay paid sick leave at the correct rate, and/or failed to provide Class Members with
written notices showing the amount of paid sick leave that had been accrued and was available



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1 for use;

2 H. Whether Defendants failed to keep complete and accurate records as
3 required by California law;

4 I. Whether Defendants failed to issue proper payments to the Class
5 Members;

6 J. Whether Defendants failed to issue required notices to the Class Members;

7 K. Whether Defendants knowingly and intentionally failed to provide the
8 Class Members with accurate and complete itemized wage statements;

9 L. Whether Defendants failed to timely pay all wages due to the Class
10 Members during employment;

11 M. Whether Defendants failed to timely pay all wages due to Class Members
12 at separation;

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

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

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

21 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
22 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
23 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
24 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
25 Members.

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

18. **Superiority:** A class action is vastly superior to other available means for fair and
efficient adjudication of Class Members' claims and would be beneficial to the parties and the



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1 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
2 and efficiently prosecute their common claims in a single forum without the unnecessary
3 duplication of effort and expense that numerous individual actions would entail. In addition, the
4 monetary amounts due to many individual Class Members are likely to be relatively small and
5 would thus make it difficult, if not impossible, for individual Class Members to both seek and
6 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
7 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
8 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

9 **IV. STATEMENT OF FACTS**

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

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

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

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

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

21. At all relevant times, the Defendants issued wages to Sotelo and all of the other
Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all



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1 relevant times, the Defendants classified Sotelo and all of the other Class Members as non-exempt
2 employees entitled to the protections of the Labor Code and the Wage Order.

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

18 23. At all relevant times, the Defendants failed to compensate Sotelo and all of the
19 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
20 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
21 required Plaintiff and all other Class Members to perform work before clocking-in and after
22 clocking-out. In addition, the Defendants forced Plaintiff and all other Class Members to wait in
23 line to clock-in and clock-out, shortening the time of their meal and rest breaks. The Defendants
24 also required Plaintiff and all other Class Members to attend unpaid, off-the-clock meetings and
25 trainings. Prior to clocking-in, the Defendants required Plaintiff and all other Class Members to
26 unlock the front door, turn on the lights, turn off the security system, and conduct a thorough
27 walk-through to ensure the restaurant was safe to open. After clocking-out, the Defendants
28 expected Plaintiff and all other Class Members to arm the alarm system, turn off all lights, and
to lock the front doors. During meal and rest 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 the policies of the Defendants



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1 and chronic understaffing, the Defendants forced Plaintiff and all other Class Members to work
2 hours they were not compensated for.

3 24. At all relevant times, the Defendants failed to provide Sotelo and all of the other
4 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required
5 Plaintiff and all other Class Members to work during their meal periods. The Defendants required
6 Plaintiff and all other Class Members to clock-in and clock-out for each meal period. The
7 Defendants forced Plaintiff and all other Class Members to wait in line to clock-in and clock-out,
8 shortening the time of their meal period. During meal periods, the Defendants required Plaintiff
9 and all other Class Members to monitor the restaurant's point-of-sale system and perform work-
10 related tasks to ensure orders were processed in a timely manner. Due to these policies and
11 chronic understaffing, the Defendants forced Plaintiff and all other Class Members to work
12 through their meal periods. The Defendants also failed to pay premium wages for days on which
13 it failed to provide Sotelo and all of the other Class Members with meal periods as required by
14 law.

15 25. At all relevant times, the Defendants failed to authorize and permit Sotelo and all
16 of the other Class Members to take ten-minute, off-duty rest breaks every four hours worked or
17 major portion thereof. Defendants forced Plaintiff and all other Class Members to wait in line to
18 clock-in and clock-out, shortening the time of their rest breaks. Due to these policies and chronic
19 understaffing, the Defendants forced Plaintiff and all other Class Members to work through their
20 rest breaks. The Defendants also failed to pay premium wages for days on which it failed to
21 authorize and permit Sotelo and all of the other Class Members to take rest breaks as required by
22 law.

23 26. At all relevant times, the Defendants failed to provide Sotelo and other Class
24 Members with paid sick leave as required by Labor Code section 246. The Defendants also failed
25 to pay paid sick leave at the correct rate. And the Defendants failed to indicate how many days
26 of paid sick leave the Class Members had available on their pay stubs, or on a document issued
27 the same day as their paychecks. The Defendants also failed to keep records showing how many
28 paid sick days Sotelo and the Class Members had earned and used.

27 27. At all relevant times, the Defendants failed to provide Sotelo and other Class
28 Members with reporting time pay as required by section 5 of the Wage Order. Sotelo and other
Class Members who reported to work but were not put to work or were furnished less than half



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1 their usual or scheduled day's work were not paid for half the usual or scheduled day's work, but
2 not less than two hours or more than four hours, at their regular rate of pay. Sotelo and the other
3 Class Members who reported for work a second time in any one workday and were furnished less
4 than two hours of work on the second reporting were not paid for at least two hours of work at
5 their regular rate of pay.

6 28. At all relevant times, the Defendants failed to pay Sotelo and other Class Members
7 their vested vacation time upon their separation of employment.

8 29. At all relevant times, the Defendants paid employees at wage rates less than the
9 rates paid to employees of the opposite sex or another race or ethnicity for substantially similar
10 work in violation of Labor Code section 1197.5.

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

25 31. At all relevant times, the Defendants had a policy or practice of unlawfully
26 deducting wages by issuing Sotelo and all of the other Class Members and Aggrieved Employees
27 in payment of wages due, or to become due, or as an advance on wages to be earned: an order,
28 check, draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it
was negotiable and payable in cash, on demand, without discount, at some established place of
business in the state), the name and address of which must but did not appear on the instrument,
and at the time of its issuance and for a reasonable time thereafter, which must be but was not at



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1 least 30 days, the maker or drawer did not have sufficient funds in, or credit, arrangement, or
2 understanding with the drawee for its payment or any scrip, coupon, cards, or other thing
3 redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.
4 Such wages were not compensated at the “regular rate” of compensation as provided under Labor
5 Code sections 226.7 and 510, subsection (a).

6 32. At all relevant times, the Defendants failed to issue to Sotelo and all of the other
7 Class Members complete and accurate wage statements that state all hours worked at the correct
8 rates of pay and all wages earned. The Defendants knowingly and intentionally failed to state on
9 the wage statements they issued to Sotelo and all of the other Class Members the unpaid wages
10 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
11 earned, all overtime wages earned, all meal period premium wages earned, all rest break premium
12 wages earned and related information.

13 33. At all relevant times, the Defendants also failed to timely pay Sotelo and all of the
14 other Class Members all earned wages as described above during employment. The Defendants
15 and/or their agents, employees, and assigns also failed to pay Sotelo and all of the other Class
16 Members all wages due and payable after demand was made for those wages, and falsely denied
17 the validity of the demand in an effort to secure those wages due and payable for themselves.

18 34. At all relevant times, the Defendants knowingly and intentionally failed to pay
19 Sotelo and other Class Members all earned wages as described above upon separation, including
20 by not properly calculating the Class Members’ regular rates of pay, by not paying the Class
21 Members for time spent working off the clock, by not paying the Class Members meal and rest
22 break premiums, and by not properly reimbursing the Class Members for necessary business
23 expenses, among other things.

24 35. At all relevant times, the Defendants failed and refused, and continue to fail and
25 refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
26 Protection Act of 2011) by, among other things, failing to provide Sotelo and the other Class
27 Members with the rates of pay and overtime rates of pay applicable to their employment,
28 allowances claimed as part of the minimum wage, the regular payday designated by Defendants,
the name of the employer, including any “doing business as” names used, the name, address, and
telephone number of the workers’ compensation insurance carrier, information regarding paid
sick leave, and other pertinent information required to be disclosed by the Defendants pursuant



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1 to Labor Code section 2810.5. Defendants' failure to provide this information, including rates of
2 pay that are in effect, has permitted the Defendants to pay Sotelo and all of the other Class
3 Members at rates of pay that were not agreed upon and which violate California's minimum wage
4 and overtime wage laws. Nor did the Defendants comply with the notice requirements of Labor
5 Code section 2810.5 involving mandatory payroll or workplace injury reporting.

6 36. At all relevant times, the Defendants failed to maintain accurate employee records
7 of Sotelo and all of the other Class Members.

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

- 10 A. Not provided with all off-duty meal periods;
- 11 B. Not authorized and permitted to take all rest break periods;
- 12 C. Not paid one hour's pay for each workday in which Defendants failed to
13 authorize and permit them to take one or more timely rest periods;
- 14 D. Not paid one hour's pay for each workday in which Defendants failed to
15 provide them with one or more timely meal periods;
- 16 E. Not provided with paid sick leave;
- 17 F. Not paid for their paid sick leave at the correct rate;
- 18 G. Not provided with a written document indicating how many days of paid
19 sick leave were earned and available;
- 20 H. Not paid reporting time pay;
- 21 I. Not paid vested vacation pay upon separation;
- 22 J. Not paid all wages earned, including, but not limited to, minimum, regular,
23 and overtime wages for work performed while clocked out;
- 24 K. Not indemnified for all necessary business expenditures incurred during
25 the discharge of their duties;
- 26 L. Not issued proper payments, including because payments were issued on
27 accounts that had insufficient funds or credit or were in the form of coupons or cards redeemable
28 in things other than money;
- M. Not provided with accurate and complete wage statements;
- N. Not timely paid all earned and unpaid wages during their employment;
- O. Not timely paid all earned and unpaid wages upon separation; and



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P. Not provided with the notices required by Labor Code section 2810.5 at the time of hire and as required thereafter.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 221, 223, 510, 1194, 1194.2, 1197, and 1198

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

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

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

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

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

41. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) 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 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 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



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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.

42. 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.

43. Labor Code section 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

44. Labor Code section 223 states:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

45. 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.

46. 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.

47. Labor Code section 1197 makes it unlawful for an employer to pay an employee



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1 less than the minimum wage required under the applicable Wage Order for all hours worked
2 during a payroll period.

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

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

9 50. 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
and all other Class Members to work hours they were not compensated for.

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

25 52. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
26 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
27 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
28 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)

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

54. 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.

55. 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.

56. 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.

57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 63. 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 64. 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 65. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 66. 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 67. 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.

68. 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.

69. 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.

70. 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.

71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 pay.

2 83. By reason of the above, Sotelo and the Class Members are entitled to reporting
3 time pay for each day they reported to work but were not paid for half their usual or scheduled
4 day's work, pursuant to the Wage Order and California Labor Code § 1198.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PAY VESTED VACATION TIME UPON SEPARATION**

7 **Lab. Code § 227.3**

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

9 84. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 85. Labor Code section 227.3 states, in relevant part:

11 Unless otherwise provided by a collective-bargaining agreement, whenever
12 a contract of employment or employer policy provides for paid vacations,
13 and an employee is terminated without having taken off his vested vacation
14 time, all vested vacation shall be paid to him as wages at his final rate in
15 accordance with such contract of employment or employer policy
16 respecting eligibility or time served; provided, however, that an
17 employment contract or employer policy shall not provide for forfeiture of
18 vested vacation time upon termination.

19 86. At all relevant times during the applicable limitations period, the Defendants
20 failed to pay Sotelo and other Class Members their vested vacation time upon their separation of
21 employment.

22 87. By reason of the above, Sotelo and the Class Members are entitled to the value of
23 their vested vacation pay which was not paid upon separation as required by California Labor
24 Code § 227.3.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO INDEMNIFY**

27 **Lab. Code § 2802**

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

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

89. In pertinent part, California 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."



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

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

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

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

23 94. By reason of the above, Sotelo and the Class Members are entitled to the value of
24 the business expenses they incurred but for which they were not reimbursed.

25 **SEVENTH CAUSE OF ACTION**

26 **PAID SICK LEAVE VIOLATIONS**

27 **Lab. Code § 246**

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

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

 96. In pertinent part, Labor Code section 246(a)(1) states: "An employee who, on or
after July 1, 2015, works in California for the same employer for 30 or more days within a year



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1 from the commencement of employment is entitled to paid sick days as specified in this section.”

2 97. In pertinent part, Labor Code section 246(b)(1) states: “An employee shall accrue
3 paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the
4 commencement of employment or the operative date of this article, whichever is later, subject to
5 the use and accrual limitations set forth in this section.”

6 98. Labor Code section 246(i) requires employers to “provide an employee with
7 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
8 employer provides in lieu of sick leave.”

9 99. Labor Code section 246(l) requires employers to pay paid sick leave for
10 nonexempt employees at either “the regular rate of pay for the workweek in which the employee
11 uses paid sick time” or at the rate “calculated by dividing the employee’s total wages, not
12 including overtime premium pay, by the employee’s total hours worked in the full pay periods of
13 the prior 90 days of employment.”

14 100. At all relevant times, the Defendants failed to provide Sotelo and the Class
15 Members with paid sick leave as required by Labor Code section 246, failed to pay sick leave at
16 the employee’s correct rate of pay, and/or failed to provide employees with written notices
17 showing the amount of paid sick leave that, under the law, Sotelo and the Class Members had
18 earned and thus had available for use.

19 101. By reason of the above, Sotelo and the Class Members are entitled to the value of
20 the sick pay they were denied, the difference between what they were paid for their sick time and
21 what they should have been paid if the regular rate for that sick time had been correctly calculated,
22 and penalties.

23 **EIGHTH CAUSE OF ACTION**

24 **RECORDKEEPING VIOLATIONS**

25 **Lab. Code §§ 432, 1174, 1198, and 1198.5**

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

27 102. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

28 103. Labor Code section 226, which also pertains to recordkeeping, requires that any
“deductions made from payment of wages shall be recorded in ink or other indelible form,
properly dated, showing the month, day, and year, and a copy of the statement and the record of
the deductions shall be kept on file by the employer for at least three years at the place of



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employment or at a central location within the State of California.”

104. Labor Code section 432 requires employers to maintain copies of any instrument an employee signs “relating to the obtaining or holding of employment” and to give a copy of that instrument to the employee upon request.

105. Labor Code section 1174, which also pertains to recordkeeping, requires an employer to maintain accurate payroll records for every employee. Labor Code section 1174.5 requires an employer to make these records available for inspection.

106. Labor Code section 1198 prohibits employers from employing any person under conditions that violate the Wage Order, and section 7 of the Wage Order requires employers to maintain accurate time and pay records for every employee.

107. Labor Code section 1198.5 requires an employer to maintain a copy of each employee’s personnel record for three years after the termination of employment.

108. At all relevant times, Defendants failed to accurately maintain all records required by the Labor Code and the applicable Wage Order, including but not limited to Sotelo and all of the other Class Members’ total hours worked, total wages paid, all meal period premiums earned, all rest period premiums earned, and applicable hourly rates during each payroll period.

109. By reason of the above, Sotelo and the Class Members are entitled to penalties.

NINTH CAUSE OF ACTION

FAILURE TO ISSUE PROPER PAYMENT

Lab. Code §§ 212, 213

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

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

111. Labor Code section 212 prohibits employers from paying wages using any “order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment,” or any “scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.”

112. Defendants violated Labor Code section 212 by, among other things, paying



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1 Sotelo and all of the other Class Members using an order, check, draft, note, memorandum, or
2 other acknowledgment of indebtedness that was not negotiable and payable in cash on demand,
3 or that was at a discount, or that did not contain the name and address of some established place
4 of business in California where it could be cashed, or for which there were insufficient funds or
5 credit for payment, or by paying Sotelo and all of the other Class Members using scrip, coupon,
6 cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable
otherwise than in money.

7 113. By reason of the above, Sotelo and the Class Members are entitled to the actual
8 cash value of the wages that were improperly paid and to penalties.

9 **TENTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REQUIRED NOTICES**

11 **Lab. Code § 2810.5**

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

13 114. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 115. Labor Code section 2810.5 requires an employer to provide each employee with
15 a written notice describing the rate or rates of pay and the basis thereof; any allowances claimed
16 against the minimum wage; the employer's regular payday; the employer's name, address,
17 telephone number, and any "doing business as" names; the name, address, and telephone number
18 of the employer's worker's compensation insurance carrier; the employee's right to accrue,
19 request, and use sick leave and to be free from retaliation for such use; the existence of any state
20 or federal disaster declarations in the employee's county of employment in the 30 days prior to
21 the employee's first day; and any other information the Labor Commissioner deems material and
necessary at the time of hire and within seven days of any change in information.

22 116. Defendants failed to provide Sotelo and all of the other Class Members with
23 notices that complied with Labor Code section 2810.5 at the time of hire, and the Defendants
24 failed to notify Sotelo and all of the other Class Members in writing within seven calendar days
25 of changes to their wage rates; allowances; regular payday; name, address, or telephone number
26 of their employer; name, address, or telephone number of their workers' compensation carrier;
27 of their rights to paid sick leave; of emergency or disaster declarations applicable to the counties
28 where Sotelo and other Class Members worked; and other information the Labor Commissioner
deemed material and necessary, among other things.



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117. By reason of the above, Sotelo and the Class Members are entitled to penalties.

ELEVENTH CAUSE OF ACTION

FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS

Lab. Code § 226

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

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

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

A. Gross wages earned;

B. 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;

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

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

E. Net wages earned;

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

G. 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;

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

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



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

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

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

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

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

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

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

27 123. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
28 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.

 124. As a result of being provided with inaccurate wage statements by Defendants,



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

10 **TWELFTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**

12 **Lab. Code § 204**

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

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

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

24 127. Labor Code section 216 prohibits an employer and its agents, employees, and
25 assigns from failing to pay all wages due and payable after a demand is made for those wages
26 and from falsely denying the validity of a demand in an effort to secure wages due and payable
27 for themselves.

28 128. Defendants failed to compensate Sotelo and all of the other Class Members 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, Defendants failed to timely pay all earned



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wages due during employment within the time periods set by Labor Code section 204.

129. By reason of the above, Sotelo and the Class Members are entitled to penalties.

THIRTEENTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES DUE UPON SEPARATION

Lab. Code §§ 201, 202, 203

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

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

131. Labor Code section 201 states, in relevant part:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately

132. Labor Code section 202 states, in relevant part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

133. Labor Code section 203 states, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

134. The Defendants knowingly and intentionally failed to pay Sotelo and other Class Members all earned wages upon separation within the timeframes specified in Labor Code sections 201 and 202, including by not properly calculating the Class Members' regular rates of pay, by not paying the Class Members for time spent working off the clock, by not paying the Class Members meal and rest break premiums, and by not properly reimbursing the Class Members for necessary business expenses, among other things.

135. By reason of the above, Plaintiff and the Class Members are entitled to the waiting time penalties specified in Labor Code section 203.



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1 **FOURTEENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

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

5 136. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

14 139. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
15 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
16 Members were deprived of minimum wages, regular wages, overtime wages, missed meal period
17 premium wages, missed rest period premium wages, phone expenses, telecom expenses,
18 reimbursements owed, reporting time pay, vested vacation time at separation, paid sick leave,
19 timely payment of all wages during employment, timely payment of all wages at separation, and
20 comparable money and property.

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

25 141. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
26 connection with their unfair competition claims pursuant to California Code of Civil Procedure
27 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

28 ///

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FIFTEENTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

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

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

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

144. Labor Code § 204 states:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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. ...

(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 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



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the close of the payroll period.

145. 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.

146. Labor Code section 212 states, in relevant part:

(a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

147. Defendants violated Labor Code section 212 by, among other things, paying the Aggrieved Employees using an order, check, draft, note, memorandum, or other acknowledgment of indebtedness that was not negotiable and payable in cash on demand, or that was at a discount, or that did not contain the name and address of some established place of business in California where it could be cashed, or for which there were insufficient funds or credit for payment, or by paying the Aggrieved Employees using scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

148. Labor Code section 216 prohibits an employer and its agents, employees, and assigns from failing to pay all wages due and payable after a demand is made for those wages and from falsely denying the validity of a demand in an effort to secure wages due and payable for themselves.

149. Defendants violated Labor Code section 216 by failing to pay the Aggrieved



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1 Employees all wages due and payable after a demand was made for those wages and by falsely
2 denying the validity of their demand in an effort to secure wages due and payable for themselves.

3 150. Labor Code sections 226, 432, 1174, 1198, 1198.5, and the applicable Wage
4 Order require employers to maintain complete and accurate records of all wages paid to
5 employees, all hours worked by employees, the start and stop times of each work period, meal
6 periods, split shift intervals, the total hours worked each day by each employee, all documents
7 signed by employees, the names and addresses of all employees, employee dates of birth, and
8 employee personnel files, among other things.

9 151. Defendants violated Labor Code sections 226, 432, 1174, 1198, 1198.5 by failing
10 to maintain complete and accurate copies of required records.

11 152. Labor Code section 246(a)(1) states, in relevant part:

12 An employee who, on or after July 1, 2015, works in California for the
13 same employer for 30 or more days within a year from the commencement
14 of employment is entitled to paid sick days as specified in this section.

15 153. Labor Code section 246(b)(1) states, in relevant part:

16 An employee shall accrue paid sick days at the rate of not less than one
17 hour per every 30 hours worked, beginning at the commencement of
18 employment or the operative date of this article, whichever is later, subject
19 to the use and accrual limitations set forth in this section.

20 154. The Defendants failed to provide Sotelo and other Aggrieved Employees with
21 paid sick leave as required by Labor Code section 246.

22 155. Labor Code section 246(l) states, in relevant part:

23 (l) For the purposes of this section, an employer shall calculate paid sick
24 leave using any of the following calculations:

25 (1) Paid sick time for nonexempt employees shall be calculated in
26 the same manner as the regular rate of pay for the workweek in
27 which the employee uses paid sick time, whether or not the
28 employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by
dividing the employee's total wages, not including overtime
premium pay, by the employee's total hours worked in the full pay
periods of the prior 90 days of employment.



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156. The Defendants did not pay Sotelo and the other Aggrieved Employees their paid sick leave at the correct rate as required by Labor Code section 246.

157. Labor Code section 246(i) states, in relevant part:

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

158. The Defendants failed to indicate how many days of paid sick leave the Aggrieved Employees had available on their pay stubs, or on a document issued the same day as their paychecks.

159. Labor Code section 2810.5 states, in relevant part:

(1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers'



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1 compensation insurance carrier.

2 (H) That an employee: may accrue and use sick leave; has a right to request
3 and use accrued paid sick leave; may not be terminated or retaliated against
4 for using or requesting the use of accrued paid sick leave; and has the right
5 to file a complaint against an employer who retaliates.

6 (I) The existence of a federal or state emergency or disaster declaration
7 applicable to the county or counties where the employee is to be employed,
8 and that was issued within 30 days before the employee's first day of
9 employment, that may affect their health and safety during their
10 employment.

11 (J) Any other information the Labor Commissioner deems material and
12 necessary.

13 160. Employers are required to update their employees in writing when any of this
14 information changes within seven calendar days, absent certain exceptions not relevant here.
15 (Lab. Code, § 226, subd. (b).)

16 161. The Defendants failed to provide the Aggrieved Employees with notices that
17 complied with Labor Code section 2810.5 at the time of hire, and the Defendants failed to notify
18 the Aggrieved Employees in writing within seven calendar days of changes to their wage rates;
19 allowances; regular payday; name, address, or telephone number of their employer; name,
20 address, or telephone number of their workers' compensation carrier; of their rights to paid sick
21 leave; of emergency or disaster declarations applicable to the counties where the Aggrieved
22 Employees worked; and other information the Labor Commissioner deemed material and
23 necessary, among other things.

24 162. During the applicable time period, Defendants violated California Labor Code
25 §§ 201, 202, 203, 204, 212, 216, 221, 226, 226.7, 246, 432, 510, 512, 1174, 1194, 1197, 1198,
26 1198.5, 2802, and 2810.5.

27 163. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
28 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.

164. 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, 212, 216, 221, 226, 226.7, 246, 432,



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1 510, 512, 1174, 1194, 1197, 1198, 1198.5, 2802, and 2810.5 during the applicable limitations
2 period in the following amounts:

3 A. For violations of California Labor Code § 204, one hundred dollars
4 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
5 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or intentional violation
(penalty amounts established by California Labor Code § 210).

6 B. For violations of California Labor Code §§ 216 & 221, one hundred
7 dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
8 (\$200.00) for each subsequent violation (penalty amounts established by California Labor Code
9 § 225.5).

10 C. For violations of California Labor Code § 226(a), two hundred fifty
11 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
12 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
13 established by California Labor Code § 226.3).

14 D. For violations of California Labor Code § 226(a), one thousand dollars
15 (\$1,000.00) for each Aggrieved Employee for each violation (penalty amounts established by
California Labor Code § 226.6).

16 E. For violations of California Labor Code §§ 212, 510, 512, and 2810.5
17 fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
18 (\$100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty
19 amounts established by California Labor Code § 558).

20 F. For violations of California Labor Code § 1174, fifty dollars (\$50.00) for
21 each Aggrieved Employee for each violation (penalty amounts established by California Labor
22 Code § 1174.5).

23 G. For violations of California Labor Code § 1197, one hundred dollars
24 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
25 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
26 pay period (regardless of whether the initial violations were intentionally committed) (penalty
amounts established by California Labor Code § 1197.1).

27 H. For violations of California Labor Code §§ 201, 202, 203, 212, 221,
28 226.7, 432, 1194, 1194.2, 1198, 1198.5, 2802, and 2810.5 one hundred dollars (\$100.00) for



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1 each Aggrieved Employee per pay period for each initial violation and two hundred dollars
2 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty
3 amounts established by California Labor Code § 2699(f)(2)).

4 165. Pursuant to California Labor Code § 248.5, Plaintiff, the State, and the Aggrieved
5 Employees, are entitled to recover civil penalties for each of the Defendants' violations of
6 California Labor Code § 246 during the applicable limitations period in the following amounts:

7 A. The dollar amount of the paid sick days withheld multiplied by three or
8 \$250, whichever is greater, but not to exceed an aggregate amount of \$4,000 for each Aggrieved
9 Employee (penalty amounts established by California Labor Code § 248.5(b)(2)).

10 B. \$50 for each Aggrieved Employee for each day Defendants failed to
11 provide the Aggrieved Employee with a written document evidencing the Aggrieved
12 Employee's available paid sick days, up to an aggregate penalty of four thousand dollars
13 (\$4,000) per Aggrieved Employee (penalties set by Labor Code section 248.5(e)).

14 166. Plaintiff has complied with the procedures for bringing suit specified in
15 California Labor Code § 2699.3.

16 A. By letter dated May 26, 2023, Plaintiff filed written notice online with the
17 Labor and Workforce Development Agency ("LWDA") regarding Defendant Far West's
18 violations and gave written notice by certified mail to Defendants of the specific provisions of
19 the California Labor Code alleged to have been violated, including the facts and theories to
20 support the alleged violations. A true and correct copy of the notice to the LWDA dated May
21 26, 2023 is attached as Exhibit A.

22 B. By letter dated June 5, 2024, Plaintiff filed a supplemental written notice
23 online with the LWDA regarding Defendant Far West's violations and gave written notice by
24 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
25 have been violated, including the facts and theories to support the alleged violations. A true and
26 correct copy of the notice to the LWDA dated June 5, 2024 is attached as Exhibit B.

27 C. By letter dated June 5, 2024, Plaintiff filed a written notice online with
28 the LWDA regarding Defendant Zion's violations and gave written notice by certified mail to
29 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
30 including the facts and theories to support the alleged violations. A true and correct copy of the
31 notice to the LWDA dated June 5, 2024 is attached as Exhibit C.



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1 D. Plaintiff submitted her LWDA notices with a fee in the amount of \$75.00.
2 The LWDA has failed to take action in response within 65 calendar days of the date of Plaintiff's
3 notice, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing
4 her that it does not intend to investigate these allegations.

5 167. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
6 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
7 connection with their claims for civil penalties.

8 **V. PRAYER FOR RELIEF**

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

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

13 B. An order that Plaintiff be appointed class representative;

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

15 D. Unpaid wages, including minimum, regular, overtime, vacation, missed
16 meal period, missed rest period, and reporting time wages;

17 E. Liquidated damages;

18 F. Civil Penalties;

19 G. Statutory penalties, including waiting time penalties;

20 H. Restitution;

21 I. Declaratory relief;

22 J. Actual damages;

23 K. Pre-judgment interest;

24 L. Costs of suit;

25 M. Reasonable attorneys' fees; and

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

27 ///

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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 12, 2024

By:



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



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EXHIBIT A



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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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).

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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

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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

EXHIBIT B



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

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spivaklaw.com Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

June 5, 2024

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

Re: Olga Sotelo / Far West Restaurant Group / Amended Notice
LWDA Case No. LWDA-CM-957766-23

To Whom It May Concern:

This amended notice is intended to supplement the original notice dated May 26, 2023, which Olga Sotelo previously submitted to the LWDA. 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 201–204, 212–213, 216, 221, 223, 226, 226.3, 226.6, 226.7, 227.3, 245–248.6, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 2802, 2810.5, 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 until April 19, 2024.

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. In addition, the Far West Restaurant Employers did not properly factor bonuses into the Aggrieved Employees' regular rates of pay, which caused the Aggrieved employees to be paid for overtime, sick time, and paid time off at the incorrect rate.

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 failed to provide Sotelo and other Aggrieved Employees with paid sick leave as required by Labor Code section 246. The Far West Restaurant Employers also failed to pay paid sick leave at the correct rate. And the Far West Restaurant Employers failed to indicate how many days of paid sick leave the Aggrieved Employees had available on their pay stubs, or on a document issued the same day as their paychecks. The Far West Restaurant Employers also failed to keep records showing how many paid sick days Sotelo and the Aggrieved Employees had earned and used.

At all relevant times, the Far West Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with reporting time pay as required by section 5 of the Wage Order. Sotelo and other Aggrieved Employees who reported to work but were not put to work or were furnished less than half their usual or scheduled day's work were not paid for half the usual or scheduled day's work, but not less than two hours or more than four hours, at their regular rate of pay. Sotelo and the other Aggrieved Employees who reported for work a second time in any one workday and were furnished less than two hours of work on the second reporting were not paid for at least two hours of work at their regular rate of pay.

At all relevant times, the Far West Restaurant Employers failed to pay Sotelo and other Aggrieved Employees their vested vacation time upon their separation of employment.

At all relevant times, the Far West Restaurant Employers paid employees at wage rates less than the rates paid to employees of the opposite sex or another race of ethnicity for substantially similar work in violation of Labor Code section 1197.5.

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 had a policy or practice of unlawfully deducting wages by issuing Sotelo and all of the other Aggrieved Employees in payment of wages due, or to become due, or as an advance on wages to be earned: an order, check, draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it was negotiable and payable in cash, on demand, without discount, at some established place of business in the state), the name and address of which must but did not appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be but was not at least 30 days, the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment or any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. Employee is further informed and believes, and based thereon alleges, that such wages were not compensated at the "regular rate" of compensation as provided under Labor Code sections 226.7 and 510, subsection (a). Sotelo and all of the other Aggrieved Employees are therefore entitled to relief under, without limitation, Labor Code sections 212, 213, 226.7, and 510 subsection (a), and the Far West Restaurant Employers are liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

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 and/or their agents, employees, and assigns also failed to pay Sotelo and all of the other Aggrieved Employees wages due and payable after demand was made for those wages, and falsely denied the validity of the demand in an effort to secure those wages due and payable for themselves, thus violating Labor Code section 216.

At all relevant times, the Far West Restaurant Employers failed to pay Sotelo and other Aggrieved Employees all earned wages as described above upon separation. Pursuant to Labor Code sections 201 and 202, an employer is required to pay all earned and unearned wages to an employee upon separation. Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are immediately due and payable. Labor Code section 202 requires an employer to pay an employee who voluntarily quits all accrued wages due within 72 hours, unless the employee has provided at least 72 hours' notice of their intention to resign, in which case all accrued wages are due and payable at the time the employee resigns. Nonetheless, the Far West Restaurant Employers failed to pay employees who quit or were discharged all accrued wages due within the relevant timeframe, including by not properly calculating the Aggrieved Employees' regular rates of pay, by not paying the Aggrieved Employees for time spent working off the clock, by not paying the Aggrieved Employees meal and rest break premiums, and by not properly reimbursing the Aggrieved Employees for necessary business expenses, among other things.

At all relevant times, the Far West Restaurant Employers failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things,

failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by the Far West Restaurant Employers pursuant to Labor Code section 2810.5. Far West Restaurant Employers’ failure to provide this information, including rates of pay that are in effect, has permitted the Far West Restaurant Employers to pay Sotelo and all of the other Aggrieved Employees at rates of pay that were not agreed upon and which violate California’s minimum wage and overtime wage laws. Nor did the Far West Restaurant Employers comply with the notice requirements of Labor Code section 2810.5 involving mandatory payroll or workplace injury reporting. Far West Restaurant Employers are thus liable for civil penalties pursuant to Labor Code sections 558 and 2699.

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 provide Sotelo and all of the other Aggrieved Employees with paid sick leave as required by law;
- (g) The Far West Restaurant Employers failed to pay Sotelo and all of the other Aggrieved Employees their paid sick leave at the correct rate, as required by law;
- (h) The Far West Restaurant Employers failed to indicate to Sotelo and all of the other Aggrieved Employees, either on their paystubs or in a document issued the same day as their paychecks, how many days of paid sick leave they had available;
- (i) The Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with reporting time pay as required by law;
- (j) The Far West Restaurant Employers failed to compensate Sotelo and other Aggrieved Employees for their vested vacation time upon separation;
- (k) 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;
- (l) The Far West Restaurant Employers failed to issue proper payments to Sotelo and all of the other Aggrieved Employees, including by issuing payments on accounts that had insufficient funds or credit and by issuing payments in the form of coupons or cards redeemable in things other than money;

- (m) The Far West Restaurant Employers knowingly and intentionally failed to provide Sotelo and all of the other Aggrieved Employees with accurate wage statements;
- (n) 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;
- (o) The Far West Restaurant Employers willfully failed to timely pay Sotelo and all of the other Aggrieved Employees all earned and unpaid wages upon separation;
- (p) The Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with the notices required by Labor Code section 2810.5 at the time of hire and as required thereafter; and
- (q) 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 §§ 221, 223, 510, 1194, 1194.2, 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.

Labor Code section 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

Labor Code section 223 states:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

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 ($1\frac{1}{2}$) 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.

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 aggrieved employee for each initial violation of Labor Code § 1194.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
4. \$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
5. \$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 Provide Paid Sick Leave
(Lab. Code § 245 et seq.)

Labor Code section 246(a)(1) states, in relevant part:

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246(b)(1) states, in relevant part:

An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

The Far West Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with paid sick leave as required by Labor Code section 246. 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. The dollar amount of the paid sick days withheld from each of the Aggrieved Employees multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per aggrieved employee (penalties set by Labor Code section 248.5(b)(2)).

Failure to Pay Paid Sick Leave at the Correct Rate
(Lab. Code § 246(l).)

Labor Code section 246(l) states, in relevant part:

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

The Far West Restaurant Employers did not pay Sotelo and the other Aggrieved Employees their paid sick leave at the correct rate as required by Labor Code section

246. 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. \$50 for each aggrieved employee for each day the violation occurred or continued, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per aggrieved employee (penalties set by Labor Code section 248.5(e)).

Failure to Report Paid Sick Leave
(Lab. Code § 246)

Labor Code section 246(i) states, in relevant part:

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

The Far West Restaurant Employers failed to indicate how many days of paid sick leave the Aggrieved Employees had available on their pay stubs, or on a document issued the same day as their paychecks. 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:

2. \$50 for each aggrieved employee for each day the violation occurred or continued, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per aggrieved employee (penalties set by Labor Code section 248.5(e)).

Failure to Provide Reporting Time Pay
(Lab. Code § 1198)

Labor Code section 1198 states, in relevant part:

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

Section 5 of the Wage Order provides, in relevant part:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

The Far West Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with reporting time pay as required by section 5 of the Wage Order. Sotelo and other Aggrieved Employees who reported to work but were not put to work or were furnished less than half their usual or scheduled day's work were not paid for half the usual or scheduled day's work, but not less than two hours or more than four hours, at their regular rate of pay. Sotelo and the other Aggrieved Employees who reported for work a second time in any one workday and were furnished less than two hours of work on the second reporting were not paid for at least two hours of work at their regular rate of pay. 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 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 Pay Vested Vacation Time at Termination
(Lab. Code § 227.3)

Labor Code section 227.3 states:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

At all relevant times during the applicable limitations period, the Far West Restaurant Employers failed to pay Sotelo and other Aggrieved Employees their vested vacation time upon their separation of employment. 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 227.3, 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)).

Failure to Issue Proper Payment
(Lab. Code §§ 212 & 213)

Labor Code section 212 states, in relevant part:

(a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

At all relevant times during the applicable limitations period, the Far West Restaurant Employers violated Labor Code section 212 by, among other things, paying Sotelo and all of the other Aggrieved Employees using an order, check, draft, note, memorandum, or other acknowledgment of indebtedness that was not negotiable and payable in cash on demand, or that was at a discount, or that did not contain the name and address of some established place of business in California where it could be cashed, or for which there were insufficient funds or credit for payment, or by paying Sotelo and all of the other Aggrieved Employees using scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

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 212, 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 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).

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). Additionally, the Far West Restaurant Employers are liable for a \$1,000 fine for each aggrieved employee for each violation of Labor Code section 226(a) pursuant to Labor Code section 226.6.

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.

Labor Code section 216 prohibits an employer and its agents, employees, and assigns from failing to pay all wages due and payable after a demand is made for those wages and from falsely denying the validity of a demand in an effort to secure wages due and payable for themselves.

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:

1. \$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); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 216, 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 225.5).

Failure to Pay All Wages Due Upon Separation
(Lab. Code §§ 201, 202, 203)

Labor Code section 201 states, in relevant part:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately

Labor Code section 202 states, in relevant part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code section 203 states, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Far West Restaurant Employers failed to pay Sotelo and other Aggrieved Employees all earned wages upon separation within the timeframes specified in Labor Code sections 201 and 202, including by not properly calculating the Aggrieved Employees' regular rates of pay, by not paying the Aggrieved Employees for time spent working off the clock, by not paying the Aggrieved Employees meal and rest break premiums, and by not properly reimbursing the Aggrieved Employees for necessary business expenses, among other things. 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 203, and \$200 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Required Notices
(Lab. Code § 2810.5)

Labor Code section 2810.5 states, in relevant part:

- (a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:
 - (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
 - (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
 - (C) The regular payday designated by the employer in accordance with the requirements of this code.
 - (D) The name of the employer, including any “doing business as” names used by the employer.
 - (E) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.
 - (F) The telephone number of the employer.
 - (G) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) The existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee's first day of employment, that may affect their health and safety during their employment.

(J) Any other information the Labor Commissioner deems material and necessary.

Employers are required to update their employees in writing when any of this information changes within seven calendar days, absent certain exceptions not relevant here. (Lab. Code, § 226, subd. (b).)

The Far West Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with notices that complied with Labor Code section 2810.5 at the time of hire, and the Far West Restaurant Employers failed to notify Sotelo and all of the other Aggrieved Employees in writing within seven calendar days of changes to their wage rates; allowances; regular payday; name, address, or telephone number of their employer; name, address, or telephone number of their workers' compensation carrier; of their rights to paid sick leave; of emergency or disaster declarations applicable to the counties where Sotelo and other Aggrieved Employees worked; and other information the Labor Commissioner deemed material and necessary, among other things. Accordingly, Sotelo seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each violation of Labor Code section 2810.5, 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
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 2810.5, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 226, 432, 1174, 1174.5, 1198, 1198.5)

Labor Code section 226, which also pertains to recordkeeping, states, in relevant part:

(a) . . . The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code section 432 states, in relevant part:

If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.

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).

Labor Code section 1198.5 states, in relevant part:

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment.

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)).

LWDA / The Far West Restaurant Employers

Re: Olga Sotelo

June 5, 2024

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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.

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

c/o Maria Z Stearns, Esq.

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EXHIBIT C



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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

June 5, 2024

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

Re: Olga Sotelo / Zion Restaurant Group, LLC
LWDA Case No. LWDA-CM-957766-23

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 Zion Restaurant Group, LLC (D/B/A WingStop), a California limited liability company, and related entities (collectively “the Zion Restaurant Employers” or “the Employers”) violated her rights and those of all other individuals the Zion 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 201–204, 212–213, 216, 221, 223, 226, 226.3, 226.6, 226.7, 227.3, 245–248.6, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 2802, 2810.5, 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 Zion Restaurant Employers and their agents and representatives.

At all relevant times, the Zion 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

Zion Restaurant Group, LLC (“Zion”) shares common ownership with Far West Restaurant Group, LLC (“Far West”). Both entities operate Wingstop restaurants in California using common policies, practices, and procedures. At all relevant times, Zion and Far West functioned as joint employers, and are collectively referred to herein as the Zion Restaurant Employers for that reason.

On approximately September 26, 2021, the Zion Restaurant Employers began to employ Sotelo in Compton in the position of hourly, non-exempt food worker. The Zion Restaurant Employers continuously employed her in that capacity until April 19, 2024.

At all relevant times, the Zion 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 Zion 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 Zion 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 Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to perform work before clocking-in and after clocking-out. In addition, the Zion 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 Zion Restaurant Employers also required Sotelo and all other Aggrieved Employees to attend unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Zion 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 Zion 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 Zion 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 Zion Restaurant Employers and chronic understaffing, the Zion Restaurant Employers

forced Sotelo and all other Aggrieved Employees to work hours they were not compensated for.

The Zion 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 Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to perform work before clocking-in and after clocking-out. In addition, the Zion 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 Zion Restaurant Employers also required Sotelo and all other Aggrieved Employees to attend unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Zion 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 Zion 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 Zion 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 Zion Restaurant Employers and chronic understaffing, the Zion Restaurant Employers forced Sotelo and all other Aggrieved Employees to work hours they were not compensated for. In addition, the Zion Restaurant Employers did not properly factor bonuses into the Aggrieved Employees' regular rates of pay, which caused the Aggrieved employees to be paid for overtime, sick time, and paid time off at the incorrect rate.

At all relevant times, the Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to work during their meal periods. The Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to clock-in and clock-out for each meal period. The Zion 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 Zion 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 Zion Restaurant Employers forced Sotelo and all other

Aggrieved Employees to work through their meal periods. The Zion 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 Zion 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 Zion 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 Zion Restaurant Employers forced Sotelo and all other Aggrieved Employees to work through their rest breaks. The Zion 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 Zion Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with paid sick leave as required by Labor Code section 246. The Zion Restaurant Employers also failed to pay paid sick leave at the correct rate. And the Zion Restaurant Employers failed to indicate how many days of paid sick leave the Aggrieved Employees had available on their pay stubs, or on a document issued the same day as their paychecks. The Zion Restaurant Employers also failed to keep records showing how many paid sick days Sotelo and the Aggrieved Employees had earned and used.

At all relevant times, the Zion Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with reporting time pay as required by section 5 of the Wage Order. Sotelo and other Aggrieved Employees who reported to work but were not put to work or were furnished less than half their usual or scheduled day's work were not paid for half the usual or scheduled day's work, but not less than two hours or more than four hours, at their regular rate of pay. Sotelo and the other Aggrieved Employees who reported for work a second time in any one workday and were furnished less than two hours of work on the second reporting were not paid for at least two hours of work at their regular rate of pay.

At all relevant times, the Zion Restaurant Employers failed to pay Sotelo and other Aggrieved Employees their vested vacation time upon their separation of employment.

At all relevant times, the Zion Restaurant Employers paid employees at wage rates less than the rates paid to employees of the opposite sex or another race of ethnicity for substantially similar work in violation of Labor Code section 1197.5.

At all relevant times, the Zion Restaurant Employers required Sotelo and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Zion 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 Zion Restaurant Employers did not provide these items and did not reimburse Sotelo and the other Aggrieved Employees for these items. The Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to utilize group texts to discuss scheduling and other work-related matters. Additionally, the Zion Restaurant Employers relied on Sotelo and all other Aggrieved Employees' mobile phones and mobile phone plans for these work-related communications. The Zion 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 Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to use pens and markers to perform their job duties. However, the Zion 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 Zion Restaurant Employers had a policy or practice of unlawfully deducting wages by issuing Sotelo and all of the other Aggrieved Employees in payment of wages due, or to become due, or as an advance on wages to be earned: an order, check, draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it was negotiable and payable in cash, on demand, without discount, at some established place of business in the state), the name and address of which must but did not appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be but was not at least 30 days, the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment or any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. Employee is further informed and believes, and based thereon alleges, that such wages were not compensated at the "regular rate" of compensation as provided under Labor Code sections 226.7 and 510, subsection (a). Sotelo and all of the other Aggrieved Employees are therefore entitled to relief under, without limitation, Labor Code

sections 212, 213, 226.7, and 510 subsection (a), and the Zion Restaurant Employers are liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

At all relevant times, the Zion 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 Zion 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 Zion Restaurant Employers also failed to timely pay Sotelo and all of the other Aggrieved Employees all earned wages as described above during employment. The Zion Restaurant Employers and/or their agents, employees, and assigns also failed to pay Sotelo and all of the other Aggrieved Employees wages due and payable after demand was made for those wages, and falsely denied the validity of the demand in an effort to secure those wages due and payable for themselves, thus violating Labor Code section 216.

At all relevant times, the Zion Restaurant Employers failed to pay Sotelo and other Aggrieved Employees all earned wages as described above upon separation. Pursuant to Labor Code sections 201 and 202, an employer is required to pay all earned and unearned wages to an employee upon separation. Labor Code section 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are immediately due and payable. Labor Code section 202 requires an employer to pay an employee who voluntarily quits all accrued wages due within 72 hours, unless the employee has provided at least 72 hours' notice of their intention to resign, in which case all accrued wages are due and payable at the time the employee resigns. Nonetheless, the Zion Restaurant Employers failed to pay employees who quit or were discharged all accrued wages due within the relevant timeframe, including by not properly calculating the Aggrieved Employees' regular rates of pay, by not paying the Aggrieved Employees for time spent working off the clock, by not paying the Aggrieved Employees meal and rest break premiums, and by not properly reimbursing the Aggrieved Employees for necessary business expenses, among other things.

At all relevant times, the Zion Restaurant Employers failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by the Zion Restaurant Employers pursuant to Labor Code section 2810.5. Zion Restaurant Employers’ failure to provide this information, including rates of pay that are in effect, has permitted the Zion Restaurant Employers to pay Sotelo and all of the other Aggrieved Employees at rates of pay that were not agreed upon and which violate California’s minimum wage and overtime wage laws. Nor did the Zion Restaurant Employers comply with the notice requirements of Labor Code section 2810.5 involving mandatory payroll or workplace injury reporting. Zion Restaurant Employers are thus liable for civil penalties pursuant to Labor Code sections 558 and 2699.

The Zion 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 Zion 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 Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Zion 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 Zion Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees at one hour's pay for each day in which the Zion Restaurant Employers failed to provide them with one or more meal periods as required by law;
- (e) The Zion Restaurant Employers failed to compensate Sotelo and all of the other Aggrieved Employees at one hour's pay for each day in which the Zion Restaurant Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with paid sick leave as required by law;
- (g) The Zion Restaurant Employers failed to pay Sotelo and all of the other Aggrieved Employees their paid sick leave at the correct rate, as required by law;
- (h) The Zion Restaurant Employers failed to indicate to Sotelo and all of the other Aggrieved Employees, either on their paystubs or in a document issued the same day as their paychecks, how many days of paid sick leave they had available;
- (i) The Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with reporting time pay as required by law;
- (j) The Zion Restaurant Employers failed to compensate Sotelo and other Aggrieved Employees for their vested vacation time upon separation;
- (k) The Zion 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;
- (l) The Zion Restaurant Employers failed to issue proper payments to Sotelo and all of the other Aggrieved Employees, including by issuing payments on accounts that had insufficient funds or credit and by issuing payments in the form of coupons or cards redeemable in things other than money;

- (m) The Zion Restaurant Employers knowingly and intentionally failed to provide Sotelo and all of the other Aggrieved Employees with accurate wage statements;
- (n) The Zion 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 Zion Restaurant Employers;
- (o) The Zion Restaurant Employers willfully failed to timely pay Sotelo and all of the other Aggrieved Employees all earned and unpaid wages upon separation;
- (p) The Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with the notices required by Labor Code section 2810.5 at the time of hire and as required thereafter; and
- (q) The Zion 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 Zion 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 Zion Restaurant Employers, Sotelo, and all of the Aggrieved Employees were covered by the Wage Order because the Zion 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 §§ 221, 223, 510, 1194, 1194.2, 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.

Labor Code section 221 states:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

Labor Code section 223 states:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

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 Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to perform work before clocking-in and after clocking-out. In addition, the Zion 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 Zion Restaurant Employers also required Sotelo and all other Aggrieved Employees to attend unpaid, off-the-clock meetings and trainings. Prior to clocking-in, the Zion 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 Zion 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 Zion 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 Zion Restaurant

Employers and chronic understaffing, the Zion Restaurant Employers forced Sotelo and all other Aggrieved Employees to work hours they were not compensated for.

At all relevant times during the applicable limitations period, the Zion 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 aggrieved employee for each initial violation of Labor Code § 1194.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
4. \$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
5. \$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)).

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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 Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with all timely meal periods. The Zion 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 Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to work during their meal periods. The Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to clock-in and clock-out for each meal period. The Zion 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 Zion 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

Zion Restaurant Employers forced Sotelo and all other Aggrieved Employees to work through their meal periods. Furthermore, the Zion 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 Zion 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 Zion 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 Zion 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 Zion 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 Zion Restaurant Employers forced Sotelo and all other Aggrieved Employees to work through their rest breaks. Moreover, the Zion Restaurant Employers failed to pay Sotelo and all of the other Aggrieved Employees premium wages on workdays the Zion 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 Zion 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 Provide Paid Sick Leave
(Lab. Code § 245 et seq.)

Labor Code section 246(a)(1) states, in relevant part:

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Labor Code section 246(b)(1) states, in relevant part:

An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

The Zion Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with paid sick leave as required by Labor Code section 246. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Zion Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows:

1. The dollar amount of the paid sick days withheld from each of the Aggrieved Employees multiplied by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per aggrieved employee (penalties set by Labor Code section 248.5(b)(2)).

Failure to Pay Paid Sick Leave at the Correct Rate
(Lab. Code § 246(l).)

Labor Code section 246(l) states, in relevant part:

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

The Zion Restaurant Employers did not pay Sotelo and the other Aggrieved Employees their paid sick leave at the correct rate as required by Labor Code section 246. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Zion Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each day the violation occurred or continued, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per aggrieved employee (penalties set by Labor Code section 248.5(e)).

Failure to Report Paid Sick Leave
(Lab. Code § 246)

Labor Code section 246(i) states, in relevant part:

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

The Zion Restaurant Employers failed to indicate how many days of paid sick leave the Aggrieved Employees had available on their pay stubs, or on a document issued the same day as their paychecks. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Zion Restaurant Employers have committed against her and all of the other Aggrieved Employees as follows:

2. \$50 for each aggrieved employee for each day the violation occurred or continued, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per aggrieved employee (penalties set by Labor Code section 248.5(e)).

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Failure to Provide Reporting Time Pay
(Lab. Code § 1198)

Labor Code section 1198 states, in relevant part:

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

Section 5 of the Wage Order provides, in relevant part:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

The Zion Restaurant Employers failed to provide Sotelo and other Aggrieved Employees with reporting time pay as required by section 5 of the Wage Order. Sotelo and other Aggrieved Employees who reported to work but were not put to work or were furnished less than half their usual or scheduled day's work were not paid for half the usual or scheduled day's work, but not less than two hours or more than four hours, at their regular rate of pay. Sotelo and the other Aggrieved Employees who reported for work a second time in any one workday and were furnished less than two hours of work on the second reporting were not paid for at least two hours of work at their regular rate of pay. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Zion 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 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 Pay Vested Vacation Time at Termination
(Lab. Code § 227.3)

Labor Code section 227.3 states:

Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

At all relevant times during the applicable limitations period, the Zion Restaurant Employers failed to pay Sotelo and other Aggrieved Employees their vested vacation time upon their separation of employment. Accordingly, Sotelo now seeks civil penalties for these Labor Code violations that the Zion 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 227.3, 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 Zion Restaurant Employers required Sotelo and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Zion 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 Zion Restaurant Employers did not provide these items and did not reimburse Sotelo and the other Aggrieved Employees for these items. The Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to utilize group texts to discuss scheduling and other work-related matters. Additionally, the Zion Restaurant Employers relied on Sotelo and all other Aggrieved Employees' mobile phones and mobile phone plans for these work-related communications. The Zion 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 Zion Restaurant Employers required Sotelo and all other Aggrieved Employees to use pens and markers to perform their job duties. However, the Zion 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 Zion 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)).

Failure to Issue Proper Payment
(Lab. Code §§ 212 & 213)

Labor Code section 212 states, in relevant part:

(a) No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

At all relevant times during the applicable limitations period, the Zion Restaurant Employers violated Labor Code section 212 by, among other things, paying Sotelo and all of the other Aggrieved Employees using an order, check, draft, note, memorandum, or other acknowledgment of indebtedness that was not negotiable and payable in cash on demand, or that was at a discount, or that did not contain the name and address of some established place of business in California where it could be cashed, or for which there were insufficient funds or credit for payment, or by paying Sotelo and all of the

other Aggrieved Employees using scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. Accordingly, Sotelo seeks civil penalties for these Labor Code violations that the Zion 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 212, 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 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).

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 Zion 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 Zion 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 Zion 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 Zion 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). Additionally, the Zion Restaurant Employers are liable for a \$1,000 fine for each aggrieved employee for each violation of Labor Code section 226(a) pursuant to Labor Code section 226.6.

Failure to Timely Pay Wages During Employment
(Lab. Code §§ 204, 216)

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.

Labor Code section 216 prohibits an employer and its agents, employees, and assigns from failing to pay all wages due and payable after a demand is made for those wages and from falsely denying the validity of a demand in an effort to secure wages due and payable for themselves.

The Zion 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 Zion 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 Zion 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 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); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 216, 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 225.5).

Failure to Pay All Wages Due Upon Separation
(Lab. Code §§ 201, 202, 203)

Labor Code section 201 states, in relevant part:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately

Labor Code section 202 states, in relevant part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code section 203 states, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Zion Restaurant Employers failed to pay Sotelo and other Aggrieved Employees all earned wages upon separation within the timeframes specified in Labor Code

sections 201 and 202, including by not properly calculating the Aggrieved Employees' regular rates of pay, by not paying the Aggrieved Employees for time spent working off the clock, by not paying the Aggrieved Employees meal and rest break premiums, and by not properly reimbursing the Aggrieved Employees for necessary business expenses, among other things. Accordingly, Sotelo now seeks civil penalties for the Labor Code violations that the Zion 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 203, and \$200 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Required Notices
(Lab. Code § 2810.5)

Labor Code section 2810.5 states, in relevant part:

- (a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:
 - (A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
 - (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
 - (C) The regular payday designated by the employer in accordance with the requirements of this code.
 - (D) The name of the employer, including any "doing business as" names used by the employer.
 - (E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.
 - (F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) The existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee's first day of employment, that may affect their health and safety during their employment.

(J) Any other information the Labor Commissioner deems material and necessary.

Employers are required to update their employees in writing when any of this information changes within seven calendar days, absent certain exceptions not relevant here. (Lab. Code, § 226, subd. (b).)

The Zion Restaurant Employers failed to provide Sotelo and all of the other Aggrieved Employees with notices that complied with Labor Code section 2810.5 at the time of hire, and the Zion Restaurant Employers failed to notify Sotelo and all of the other Aggrieved Employees in writing within seven calendar days of changes to their wage rates; allowances; regular payday; name, address, or telephone number of their employer; name, address, or telephone number of their workers' compensation carrier; of their rights to paid sick leave; of emergency or disaster declarations applicable to the counties where Sotelo and other Aggrieved Employees worked; and other information the Labor Commissioner deemed material and necessary, among other things. Accordingly, Sotelo seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each violation of Labor Code section 2810.5, 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

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 2810.5, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 226, 432, 1174, 1174.5, 1198, 1198.5)

Labor Code section 226, which also pertains to recordkeeping, states, in relevant part:

- (a) . . . The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code section 432 states, in relevant part:

If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.

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).

Labor Code section 1198.5 states, in relevant part:

(c) The employer shall do all of the following:

(1) With regard to all employees, maintain a copy of each employee's personnel records for a period of not less than three years after termination of employment.

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 Zion 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 Zion 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)).

LWDA / Zion Restaurant Group, LLC

Re: Olga Sotelo

June 5, 2024

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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.

Zion Restaurant Group, LLC

c/o Maria Z Stearns, Esq.

Rutan & Tucker, LLP

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Irvine, CA 92618

mstearns@rutan.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 On Monday, August 12, 2024, I served the foregoing document described
10 as [PROPOSED]SECOND AMENDED COMPLAINT on interested parties by electronic
mail, addressed as follows:

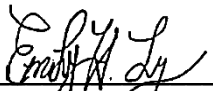
11 Maria Z. Stearns, Esq.
12 Kenneth J. Zielinski, Esq.
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15 18575 Jamboree Road
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vhuang@rutan.com

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

20 EXECUTED on Monday, August 12, 2024, at Burbank, California.

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

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

25 
26 EMILY HONG LY



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