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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

CHAD SWEET, as an aggrieved
employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and
other non-party Aggrieved
Employees,

Plaintiff,

vs.

STERLING VENUE VENTURES, LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: **CIV SB 2320220**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded



1 Plaintiff Chad Sweet, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on June 14, 2023, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Chad Sweet is a resident of Jurupa Valley, in Riverside County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately April 2021 to July 2022. Plaintiff worked as a Bartender for Defendants at The Canyon entertainment venue in Montclair, California. Plaintiff typically worked eight (8) hours or more per day, and three (3) to five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$15.00 per hour. Plaintiff's job duties included, without limitation, preparing and serving drinks, processing customer sales transactions, and cleaning the bar area.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with an "Alternative Dispute Resolution Agreement" ("Arbitration Agreement") which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to employees for signature during the orientation process, including a Meal and Rest Break Compliance Form; Meal and Rest Break Waiver Form; and Employee Handbook Acknowledgement. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with other onboarding documents. Further, Defendants did not set forth in the agreement or

1 otherwise provide employees with the rules which will govern the arbitration, instead forcing
2 employees to seek this information out on their own.

3 8. STERLING VENUE VENTURES, LLC was and is, upon information and
4 belief, a California limited liability company, and at all times hereinafter mentioned, an
5 employer whose employees are engaged throughout this county, the State of California.

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

10 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
11 were the partners, agents, owners, or managers of STERLING VENUE VENTURES, LLC at
12 all relevant times.

13 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
14 acts and omissions alleged herein was performed by, or is attributable to, STERLING VENUE
15 VENTURES, LLC and/or DOES 1 through 10 (collectively, "Defendants" or "STERLING"),
16 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
17 with, each of the other co-Defendants and was acting within the course and scope of such
18 agency, employment, joint venture, or concerted activity with legal authority to act on the
19 others' behalf. The acts of any and all Defendants were in accordance with, and represent, the
20 official policy of Defendants.

21 12. At all relevant times, Defendants, and each of them, ratified each and every act
22 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
23 and abetted the acts and omissions of each and all the other Defendants in proximately causing
24 the damages herein alleged.

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

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1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 14. Defendants operate seven (7) concert hall venues in California. Upon
3 information and belief, Defendants maintain a single, centralized Human Resources (HR)
4 department at their corporate headquarters in Westlake Village or Agoura Hills, California, for
5 all non-exempt, hourly paid employees working for Defendants in California, which is
6 responsible for the recruiting and hiring of new employees, and communicating and
7 implementing Defendants' company-wide policies, including timekeeping policies and meal
8 and rest period policies, to employees throughout California.

9 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
10 information and belief, received the same standardized documents and/or written policies.
11 Upon information and belief, the usage of standardized documents and/or written policies,
12 including new-hire documents, indicate that Defendants dictated policies at the corporate level
13 and implemented them company-wide, regardless of their employees' assigned locations or
14 positions. Upon information and belief, Defendants set forth uniform policies and procedures
15 in several documents provided at an employee's time of hire.

16 16. Upon information and belief, Defendants maintain a centralized Payroll
17 department at their corporate headquarters in Westlake Village or Agoura Hills, California,
18 which processes payroll for all non-exempt, hourly paid employees working for Defendants at
19 their various locations in California, including Plaintiff and other non-party Aggrieved
20 Employees. Based upon information and belief, Defendants issue the same formatted wage
21 statements to all non-exempt, hourly paid employees in California, irrespective of their work
22 locations. Upon information and belief, Defendants process payroll for departing employees
23 in the same manner throughout the State of California, regardless of the manner in which each
24 employee's employment ends.

25 17. Defendants continue to employ non-exempt or hourly paid employees in
26 California.

27 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

3 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
4 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
5 were not recorded.

6 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive certain wages for overtime compensation and that they were not receiving certain
9 wages for overtime compensation.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive at least minimum wages for compensation and that they were not receiving at least
13 minimum wages for work that was required to be done off-the-clock. In violation of the
14 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
15 least minimum wages for work done off-the-clock.

16 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
19 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
20 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
21 other non-party Aggrieved Employees were not provided with all meal periods or payment of
22 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
23 uninterrupted, thirty (30) minute meal period.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
27 payment of one (1) additional hour of pay at their regular rates of pay when they were not
28 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party

1 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
2 provided with payment of one (1) additional hour of pay at their regular rates of pay when
3 they were not authorized and permitted to take a compliant rest period.

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 receive complete and accurate wage statements in accordance with California law. In
7 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
8 were not provided complete and accurate wage statements.

9 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they had a duty to maintain accurate and complete payroll records in
11 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
12 and intentionally failed to do so.

13 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 timely payment of wages during their employment. In violation of the California Labor Code,
16 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
17 including, but not limited to, overtime wages, minimum wages, meal and rest period
18 premiums, and/or reporting time pay, within permissible time periods.

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

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 be paid reporting time pay when they reported to work for their usual or scheduled shift but
28 were put to work for less than half of the usual or scheduled shift. In violation of the

1 California Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved
2 Employees reporting time pay due.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 receive reimbursement for all business-related expenses and costs they incurred during the
6 course and scope of their employment and that they did not receive reimbursement of
7 applicable business-related expenses and costs incurred.

8 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants knew or should have known that Defendants had a duty to provide
10 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
11 of their employment with Defendants as required by the California Wage Theft Prevention
12 Act, but failed to do so.

13 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
16 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
17 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
18 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

28 34. Plaintiff and other current and former employees of Defendants are "aggrieved

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

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

- (a) The aggrieved employee shall give written notice by online filing (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

- (a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the

specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

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

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

37. On June 14, 2023, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-961981-23. A true and correct copy of Plaintiff's written notices to the LWDA and Defendants are attached hereto as "Exhibit 1."

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

39. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,

1 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

2 40. Labor Code section 558(a) provides “[a]ny employer or other person acting on
3 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
4 provision regulating hours and days of work in any order of the Industrial Welfare
5 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
6 dollars (\$50) for each underpaid employee for each pay period for which the employee was
7 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
8 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
9 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
10 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
11 as a private attorney general, seeks assessment and collection of civil penalties under Labor
12 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
13 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
14 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
15 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
16 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
17 applicable IWC Wage Order.

18 41. Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
20 Employees’ rights by violating various sections of the California Labor Code as set forth
21 above.

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

25 43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for himself, all
28 other non-party Aggrieved Employees, and the State of California against Defendants for

violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

45. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

46. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiff and other non-party Aggrieved Employees to take rest
3 periods, as set forth below;

4 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
5 IWC Wage Order for failure to provide accurate and complete wage
6 statements to Plaintiff and other non-party Aggrieved Employees, as set
7 forth below;

8 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
9 IWC Wage Order for failure to maintain payroll records, as set forth
10 below;

11 (g) Violation of Labor Code sections 204 for failure to pay all earned wages
12 during employment, as set forth below;

13 (h) Violation of Labor Code section 201 and 202 for failure to pay all
14 earned wages upon termination, as set forth below;

15 (i) Violation of Labor Code section 1198 and the applicable IWC Wage
16 Order for failure to pay reporting time pay when Plaintiff and other non-
17 party Aggrieved Employees were put to work for less than half of their
18 regular scheduled shifts, as set forth below;

19 (j) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
20 and other non-party Aggrieved Employees for all business expenses
21 necessarily incurred, as set forth below; and;

22 (k) Violation of Labor Code section 2810.5 for failure to provide notice of
23 material terms of employment, as set forth below.

24 **FAILURE TO PAY OVERTIME**

25 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

26 47. Labor Code section 1198 makes it illegal to employ an employee under
27 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
28 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission

1 shall be the . . . standard conditions of labor for employees. The employment of any employee
2 . . . under conditions of labor prohibited by the order is unlawful.”

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

7 49. Specifically, the applicable IWC Wage Order provides that Defendants are and
8 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
9 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
10 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
11 (40) hours in a workweek.

12 50. The applicable IWC Wage Order further provides that Defendants are and were
13 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
14 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
15 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
16 behalf of, the employee, including shift differential pay, nondiscretionary bonuses,
17 commissions, and incentive pay.

18 51. California Labor Code section 510 codifies the right to overtime compensation
19 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
20 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
21 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
22 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
23 in a day on the seventh (7th) day of work.

24 52. During the relevant time period, Defendants willfully failed to pay all overtime
25 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
26 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
27 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
28 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were

1 not recorded.

2 53. First, Defendants had, and continue to have, a company-wide policy and/or
3 practice of discouraging and impeding Plaintiff and other non-party Aggrieved Employees
4 from recording hours worked that were outside of their scheduled shifts, in order to limit the
5 amount of overtime employees could accrue. This policy of limiting overtime, coupled with
6 Defendants' use of labor budgets and assignment of heavy workloads (*see infra*), led Plaintiff
7 and other non-party Aggrieved Employees to work off-the clock before and after their
8 schedule shift times. For example, prior to starting his shift, Defendants would require
9 Plaintiff to perform errands such as picking up materials and supplies, which would take up to
10 one (1) hour each instance. Additionally, Defendants required Plaintiff and other non-party
11 Aggrieved Employees to work off-the-clock after their scheduled shifts ended. Specifically,
12 Plaintiff spent approximately 30 minutes cleaning the bar area after clocking out because
13 management frowned upon employees accruing overtime. Moreover, Plaintiff and other non-
14 party Aggrieved Employees were required to respond to communications from management
15 on their personal mobile devices and complete work-related tasks outside their scheduled
16 shifts. For example, once per week while off-the-clock, Plaintiff was required to respond to
17 phone calls regarding purchasing materials and supplies, reporting inventory, and other work
18 assignments for 10 minutes per instance.

19 54. In addition, because Defendants' timekeeping system was integrated with the
20 company's point-of-sale ("POS") system, Plaintiff and other non-party Aggrieved Employees
21 would often have to wait to clock in for the start of their shifts, because other employees were
22 using the POS system to handle customer transactions. For example, Plaintiff was sometimes
23 required to wait up to 15 minutes under Defendants' control until a POS machine was
24 available for clocking-in, time for which he was not paid. Further, during this time, while
25 Plaintiff waited to clock in for the start of his shift, he was required to perform work tasks
26 such as preparing the bar area for service. Thus, Defendants failed to track all of the time that
27 employees spent performing work-related tasks outside of their shifts, and Plaintiff and other
28 non-party Aggrieved Employees received no compensation for this time.

1 55. Second, on information and belief, Defendants had, and continue to have, a
2 company-wide policy and/or practice of strictly staffing their locations based on labor hours
3 set at the corporate-level which, combined with the assignment of heavy workloads, has
4 resulted in a failure to provide, Plaintiff and other non-party Aggrieved Employees with
5 adequate meal period coverage, because there were too few employees on duty to handle the
6 workload. Additionally, Defendants, on a company-wide basis, had a practice of failing to
7 schedule meal periods which, in conjunction with the assignment of heavy workloads, further
8 caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties
9 for compliant meal periods. As a result of this lack of meal period coverage, Plaintiff and
10 other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
11 periods during shifts when they were entitled to receive a meal period. For example,
12 Plaintiff's meal periods would be interrupted by his managers or coworkers asking him work-
13 related questions or requiring his assistance with the POS system to close out customer
14 transactions. Thus, Plaintiff and other non-party Aggrieved Employees worked through their
15 meal periods or had them interrupted in order to complete their assigned workloads.
16 Defendants did not pay Plaintiff and other non-party Aggrieved Employees for the time they
17 continued to perform tasks during meal periods.

18 56. Furthermore, on information and belief, because Defendants frowned upon
19 employees accruing meal period penalties, Defendants pressured Plaintiff and other non-party
20 Aggrieved Employees to clock out for meal periods to reflect compliant meal periods and/or
21 adjusted their time records to reflect compliant meal periods, regardless of whether they had
22 received a compliant meal period or not, in order to strictly limit meal penalties that
23 Defendants would otherwise owe. Thus, Defendants did not record all hours worked during
24 meal periods and Plaintiff and other non-party Aggrieved Employees performed work during
25 meal periods for which they were not paid.

26 57. Defendants knew or should have known that, as a result of these company-wide
27 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
28 their assigned duties off-the-clock before and after their shifts and during meal periods, and

1 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
2 and other non-party Aggrieved Employees sometimes worked shifts of eight (8) hours a day or
3 more, or forty (40) hours a week or more, some of this off-the-clock work qualified for
4 overtime premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were
5 not paid overtime wages for all of the overtime hours they actually worked.

6 58. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
7 the balance of overtime compensation as required by California law, violates the provisions of
8 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 558 and/or 2699(a), (f), and (g).

11 **FAILURE TO PAY MINIMUM WAGES**

12 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

13 59. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
14 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
15 to be paid to employees, and the payment of a wage less than the minimum so fixed is
16 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time
17 during which an employee is subject to the control of an employer, and includes all the time
18 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
19 Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

20 60. As stated, Defendants had a company-wide policy and/or practice of utilizing
21 labor budgets and limiting overtime accrual, leading to the failure to compensate Plaintiff and
22 other non-party Aggrieved Employees for their time spent performing work off-the-clock
23 before and after their shifts, including picking up materials and supplies, cleaning the bar
24 areas, waiting to clock in, and responding to communications from management on their
25 personal mobile devices. Defendants failed to track this time Plaintiff and other non-party
26 Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-party
27 Aggrieved Employees received no compensation for this time.

28 61. As also stated above, due to Defendants' policies and/or practices of utilizing

1 labor budgets, understaffing, assigning heavy workloads, failing to schedule meal periods, and
2 subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees
3 were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise
4 not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent
5 employees from accruing meal period penalties, upon information and belief, Defendants'
6 managers pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal
7 periods and/or adjusted their time records to reflect compliant meal periods, even when meal
8 periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay
9 Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid
10 meal periods because these hours were not always correctly recorded.

11 62. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
12 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
13 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
14 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
15 1194, 1197, and 1198.

16 63. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
17 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
18 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
19 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
21 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

22 64. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
24 non-party Aggrieved Employees' employment by Defendants.

25 65. At all relevant times herein set forth, California Labor Code section 512(a)
26 provides that an employer may not require, cause, or permit an employee to work for a period
27 of more than five (5) hours per day without providing the employee with a meal period of not
28 less than thirty (30) minutes, except that if the total work period per day of the employee is

1 not more than six (6) hours, the meal period may be waived by mutual consent of both the
2 employer and the employee. Under California law, first meal periods must start after no more
3 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

4 66. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

7 67. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
8 and the applicable IWC Wage Order also require employers to provide a second meal period
9 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
10 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
11 total hours worked is no more than twelve (12) hours, the second meal period may be waived
12 by mutual consent of the employer and the employee only if the first meal period was not
13 waived.

14 68. First, during the relevant time period, as stated, Defendants had, and continue
15 to have, company-wide policies and/or practices of understaffing their locations due to labor
16 budgeting and/or limited payroll allocation, which combined with the assignment of heavy
17 workloads and failure to schedule meal periods, resulted in a lack of meal period coverage and
18 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
19 uninterrupted meal periods to which they were entitled. As a result, Plaintiff and other non-
20 party Aggrieved Employees had to work through all or part of their meal periods, took their
21 meal periods late, and/or had their meal periods interrupted. For example, up to three (3)
22 times per week, Plaintiff missed his meal periods and/or took his meal periods late, after the
23 end of his fifth hour of work, in order to complete customer sales transactions and prepare
24 drink orders. As a further example, Plaintiff had his meal periods interrupted by managers or
25 coworkers asking him work-related questions or requiring assistance with the POS system.

26 69. Second, as stated, on information and belief, because Defendants frowned upon
27 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
28 other non-party Aggrieved Employees to clock out for meal periods and/or adjusted their time

1 records to reflect compliant meal periods, even when they did not receive a compliant meal
2 period, in order to strictly limit meal penalties that Defendants would otherwise owe. For
3 example, when Plaintiff was unable to take a compliant meal period, he was pressured by his
4 manager to adjust his meal period punch times with a management access card at the end of
5 his shift to make his meal periods appear compliant.

6 70. Third, during the relevant time period, Defendants maintained a company-wide
7 unlawful written meal period policy insofar as it fails to state the timing of when meal periods
8 must occur. Under California law, first meal periods must start after no more than five hours
9 of work. *Brinker*, 53 Cal. 4th at 1041- 1042. However, Defendants' written meal period
10 policy only states, in relevant part:

11 **Meal Break Obligations in California**

12 You cannot employ someone for a work period of more than five hours
13 without providing and unpaid, off-duty meal period of at least 30 minutes.
The first meal period must be provided no later than the

14 The employer satisfies its legal obligation to provide an off-duty meal
15 period to its employees if it:

- 16 • Relieves its employees of all duty.
- 17 • Relinquishes control of their activities.
- 18 • Permits them a reasonable opportunity to take an uninterrupted,
30-minute break.
- 19 • Does not impede or discourage them from doing so.

A meal break can be unpaid only if all of the above conditions are met.

20 Defendants' written policy fails to state the correct timing of when the first meal period must
21 take place (i.e., within the first five (5) hours of work) under California law and is therefore
22 facially invalid.

23 71. Fourth, Defendants did not provide Plaintiff and other non-party Aggrieved
24 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
25 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or
26 more hours per day but was not provided a second 30-minute meal period. Plaintiff and other
27 non-party Aggrieved Employees did not sign valid meal period waivers on days that they were
28 entitled to meal periods and were not relieved of all duties.

1 72. Moreover, Defendants had a company-wide policy of requiring all employees
2 to sign blanket meal period waivers. Defendants took the position that non-exempt, hourly
3 paid employees had waived their rights to first meal periods for the entirety of their
4 employment and, on that basis, did not provide them with all meal periods to which they were
5 entitled. Further, Defendants' "Meal & Rest Break Waiver Form" fails to provide employees
6 with a mechanism to revoke the blanket meal period waiver. Defendants' presumption that
7 meal periods would not be provided for shifts in excess of five (5) hours but less than six (6)
8 hours, due to blanket meal period waivers signed at or near the time of hire, and failure to
9 provide employees with a mechanism to revoke the waivers, discouraged and impeded
10 Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they
11 were entitled.

12 73. Furthermore, an employer's obligation to provide a meal period is only
13 "triggered" when the employer "employs an employee for a work period of more than five
14 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
15 anyone to work for a full five hours, its meal break obligation is triggered.").

16 [A]fter the meal break obligation is triggered . . . an employer is put to a
17 choice: it must (1) afford an off-duty meal period; (2) consent to a
18 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
19 obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for
premium pay.

20 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
21 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
22 simultaneously at or near their time of hire (as opposed to on a specific work day) renders
23 them invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other
24 non-party Aggrieved Employees with meal periods did not arise until they had employed them
25 for a full five (5) hours.

26 74. At all times mentioned herein, Defendants knew or should have known that as a
27 result of their policies, Plaintiff and other non-party Aggrieved Employees were prevented
28 from being relieved of all duties and required to perform some of their assigned duties during

1 meal periods. Defendants further knew or should have known that they did not pay Plaintiff
2 and other non-party Aggrieved Employees meal period premiums when meal periods were
3 late, interrupted, shortened, and/or missed.

4 75. Furthermore, Defendants engaged in a company-wide practice and/or policy of
5 not paying all meal period premiums owed when compliant meal periods are not provided.
6 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
7 have not received premium pay for missed, late, and interrupted meal periods.

8 76. Defendants' conduct violates the applicable IWC Wage Order, and California
9 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
10 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
11 558 and/or 2699(a), (f), and (g).

12 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
13 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

14 77. At all relevant times herein set forth, the applicable IWC Wage Order and
15 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
16 non-party Aggrieved Employees' employment by Defendants.

17 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very
18 employer shall authorize and permit all employees to take rest periods, which insofar as
19 practicable shall be in the middle of each work period" and that the "rest period time shall be
20 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof" unless the total daily work time is less than three and one-half
22 (3 ½) hours.

23 79. At all relevant times, California Labor Code section 226.7 provides that no
24 employer shall require an employee to work during any rest period mandated by an applicable
25 order of the California IWC. To comply with its obligation to authorize and permit rest
26 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
27 employer must "relinquish any control over how employees spend their break time, and
28 relieve their employees of all duties—including the obligation that an employee remain on

1 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
2 *Inc.*, 2 Cal. 5th 257, 273 (2016).

3 80. Pursuant to the applicable IWC Wage Order and California Labor Code section
4 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
5 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
6 required rest period was not authorized and permitted.

7 81. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
9 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
10 Defendants’ company-wide policies and/or practices, including labor budgeting and/or limited
11 payroll allocation, understaffing, and assigning heavy workloads, prevented Plaintiff and other
12 non-party Aggrieved Employees from being relieved of all duty in order to take their rest
13 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’
14 failure to provide adequate rest period coverage, further led to Plaintiff and other non-party
15 Aggrieved Employees not being authorized and permitted to take compliant rest periods.

16 82. Moreover, Defendants’ company-wide policies and/or practices required all
17 employees to sign blanket rest period waivers. Defendants took the position that non-exempt,
18 hourly paid employees had waived their rights to rest periods for the entirety of their
19 employment and, on that basis, did not provide them with all rest periods to which they were
20 entitled. Defendants’ “Meal & Rest Break Waiver Form” also failed to provide employees
21 with a mechanism to revoke the blanket rest period waiver. Defendants’ presumption that rest
22 periods would not be provided for shifts less than six (6) hours due to blanket rest period
23 waivers signed at or near the time of hire, and failure to provide employees with a mechanism
24 to revoke the waivers, discouraged and impeded Plaintiff and other non-party Aggrieved
25 Employees from taking all rest periods to which they were entitled.

26 83. Furthermore, upon information and belief, Defendants maintained a company-
27 wide on-premises rest period policy, which effectively required that Plaintiff and other non-
28 party Aggrieved Employees remain on or near Defendants’ premises during their rest periods.

1 Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the
2 premises during rest periods, they were denied the ability to use their rest periods freely for
3 their own purposes, such as running personal errands. Thus, Defendants effectively
4 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
5 periods.

6 84. As a result of Defendants' practices and policies, Plaintiff and other non-party
7 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
8 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
9 were entitled. For example, Plaintiff had to forgo nearly all his rest periods because of the
10 lack of coverage and Defendants' failure to schedule rest periods for employees.

11 85. Defendants have also engaged in a systematic, company-wide practice and/or
12 policy of not paying rest period premiums owed when rest periods are not authorized and
13 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
14 Employees have not received premium pay for all missed rest periods. Accordingly,
15 Defendants failed to authorize and permit all compliant rest periods and failed to pay the full
16 rest period premiums due.

17 86. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
19 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
20 558 and/or 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
22 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

23 87. At all relevant times herein, California Labor Code section 226(a) provides that
24 every employer shall furnish each of his or her employees an accurate and complete itemized
25 wage statement in writing, including, but not limited to, the name and address of the legal
26 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
27 applicable rates of pay.

28 88. During the relevant time period, Defendants have knowingly and intentionally

1 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
2 inaccurate wage statements. For example, Defendants issued uniform wage statements to
3 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
4 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
5 the pay period, including rates of pay for overtime wages, and the corresponding number of
6 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
7 226(a)(2), 226(a)(5), and 226(a)(9).

8 89. Because Defendants did not record the time Plaintiff and other non-party
9 Aggrieved Employees spent working off-the-clock and deducted time from their records for
10 meal periods that were interrupted and/or missed (and therefore time for which they should
11 have been paid), Defendants did not list the correct amount of gross wages and net wages
12 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
13 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
14 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
15 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
16 pay in effect during the pay period and the corresponding accurate number of hours worked at
17 each hourly rate, in violation of section 226(a)(9).

18 90. The wage statement deficiencies also include, among other things, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
21 for which aggrieved employees were paid; failing to list the name of the employee and only
22 the last four digits of his or her social security number or an employee identification number
23 other than a social security number; failing to list the name and address of the legal entity that
24 is the employer; and/or failing to state all hours worked as a result of not recording or stating
25 hours worked off-the-clock.

26 91. California Labor Code section 1174(d) provides that “[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
5 civil penalty if they fail to maintain accurate and complete records as required by section
6 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
7 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
8 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
9 as a result of failing to record the off-the-clock hours that they worked.

10 92. California Labor Code section 1198 provides that the maximum hours of work
11 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
12 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
13 employment of any employees for longer hours than those fixed by the order or under
14 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
15 Wage Order, employers are required to keep accurate time records showing when the
16 employee begins and ends each work period and meal period. During the relevant time
17 period, Defendants engaged in company-wide practices and/or policies of failing to record
18 actual hours worked (including falsifying time records by recording that compliant meal
19 periods were taken regardless of if or when meal periods were actually taken), and thereby
20 failed to keep accurate records of work period and meal period start and end times for Plaintiff
21 and other non-party Aggrieved Employees in violation of section 1198. Furthermore, in light
22 of Defendants’ failure to provide Plaintiff and other non-party Aggrieved Employees with
23 second 30-minute meal periods to which they were entitled, Defendants kept no records of
24 meal start and end times for second meal periods.

25 93. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
26 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
27 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

28 //

1 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

2 **VIOLATION OF LABOR CODE SECTION 204**

3 94. At all relevant times herein set forth, California Labor Code section 204
4 requires that all wages earned by any person in any employment between the 1st and the 15th
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the 16th and the 26th day of the month during which
7 the labor was performed. Labor Code section 204 further provides that all wages earned by
8 any person in any employment between the 16th and the last day, inclusive, of any calendar
9 month, other than those wages due upon termination of an employee, are due and payable
10 between the 1st and the 10th day of the following month.

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

17 96. During the relevant time period, Defendants willfully failed to pay Plaintiff and
18 other non-party Aggrieved Employees all wages due to them within any time period specified
19 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
20 wages, meal and rest period premiums, and/or reporting time pay.

21 97. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
22 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES UPON TERMINATION**

24 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

25 98. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
26 that if an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
28 her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

99. On information and belief, Defendants have a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff was terminated on July 29, 2022; however, Defendants did not provide him with his final pay until August 9, 2022. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of California Labor Code section 201.

100. In addition, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums; and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

101. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO PAY REPORTING TIME PAY

VIOLATION OF LABOR CODE SECTION 1198

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

103. California Code of Regulations, Title 8, section 11050(5)(A) provides that

1 “[e]ach workday an employee is required to report for work and does report, but is not put to
2 work or is furnished less than half said employee’s usual or scheduled day’s work, the
3 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
4 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
5 shall not be less than the minimum wage.” The “primary purpose of the reporting time
6 regulation” is “to guarantee at least partial compensation for employees who report to work
7 expecting to work a specified number of hours, and who are deprived of that amount because
8 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
9 *Cellular*, 209 Cal. App. 4th 556 (2012).

10 104. On information and belief, Defendants violated California Labor Code section
11 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants
12 failed to pay Plaintiff and other non-party Aggrieved Employees reporting time pay when they
13 reported to work for their usual or scheduled shifts, but were put to work for less than half of
14 the usual or scheduled shift. For example, three (3) times throughout his employment, when
15 scheduled to work an eight (8) hour shift, Defendants’ managers sent Plaintiff home before he
16 had an opportunity to work at least half of his shift because business was slow, but on
17 information and belief, Plaintiff was only paid for the time he had worked. Although Plaintiff
18 and other non-party Aggrieved Employees reported to work based on the schedule that
19 Defendants provided to them, Defendants would send them home before they had worked at
20 least half of their scheduled shifts without giving them reporting time pay.

21 105. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
22 properly compensated with reporting time pay in violation of California Labor Code section
23 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Plaintiff and other
24 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
25 Labor Code sections 2699(a), (f), and (g).

26 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

27 **VIOLATION OF LABOR CODE SECTION 2802**

28 106. At all times herein set forth, California Labor Code section 2802 provides that

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

11 107. First, during the relevant time period, Defendants had a company-wide policy
12 of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
13 mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out
14 their job duties, but failed to reimburse them for all costs of their work-related mobile device
15 expenses. For example, Plaintiff was required to use his personal cellular phone to respond to
16 calls from Defendants to discuss work-related matters such as purchasing materials and
17 supplies, reporting inventory, and security issues. Although Defendants required Plaintiff and
18 other non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile
19 data to carry out their work-related responsibilities, Defendants failed to reimburse them for
20 these costs.

21 108. Second, during the relevant time period, Defendants, on a company-wide basis,
22 required that Plaintiff and other non-party Aggrieved Employees use their own personal
23 vehicles to run company errands. For example, Plaintiff was required to use his personal
24 vehicle and drive to a local grocery store or office supply store to pick up supplies, such as
25 lemons, ice, and printer paper. On average, Plaintiff estimates driving approximately six (6)
26 miles per instance to run company errands in his personal vehicle. Although Defendants
27 required Plaintiff and other non-party Aggrieved Employees to utilize their personal vehicles
28 to carry out their work-related responsibilities, Defendants failed to reimburse them for their

1 mileage or travel expenses.

2 109. Third, during the relevant time period, Defendants, on a company-wide basis,
3 required Plaintiff and other non-party Aggrieved Employees to obtain and pay for certain
4 certifications, which were required for their continued employment, as well as associated cost
5 such as training. For example, Plaintiff complied with this requirement and spent
6 approximately \$40 to obtain a food handler card and an Alcohol Server certification, but
7 Defendants did not reimburse him for the cost of obtaining the certifications. Thus,
8 Defendants failed to reimburse Plaintiff and other non-party Aggrieved Employees for the
9 costs of obtaining these certifications, including training fees.

10 110. Defendants could have provided Plaintiff and other non-party Aggrieved with
11 the actual equipment for use on the job, such as company mobile devices and company
12 vehicles. Or, Defendants could have reimbursed employees for the costs of their mobile
13 device usage, mileage and travel expenses, and certification fees. Instead, Defendants passed
14 these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all
15 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

16 111. Defendants' company-wide policy and/or practice of not reimbursing
17 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
18 and other non-party Aggrieved Employees violates California Labor Code section 2802.
19 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
22 **EMPLOYMENT**

23 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

24 112. California's Wage Theft Prevention Act was enacted to ensure that employers
25 provide employees with basic information material to their employment relationship at the
26 time of hiring, and to ensure that employees are given written and timely notice of any
27 changes to basic information material to their employment. Codified at California Labor
28 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an

1 employer must provide written notice to employees containing basic and material payroll
2 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
3 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
4 overtime, the regular payday designated by the employer, and any allowances claims as part
5 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
6 (C).

7 113. Defendants failed to provide Plaintiff and other non-party Aggrieved
8 Employees written notice that lists all the requisite information set forth in Labor Code section
9 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff with the overtime
10 rate(s) of pay, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that
11 Defendants provided to Plaintiff is blank where the aforementioned wage information should
12 be filled in.

13 114. Defendants' failure to provide Plaintiff and other non-party Aggrieved
14 Employees with written notice of basic information regarding their employment with
15 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
16 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
17 Code sections 2699(a), (f), and (g).

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
22 judgment against Defendants, jointly and severally, as follows:

23 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
24 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
25 amount.

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

27 2. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved

1 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
2 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
3 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
4 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
5 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
6 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
7 termination); 1198 and the applicable IWC Wage Order (by failing to provide reporting time
8 pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide
9 written notice of information material to employment);

10 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
11 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
12 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

13 4. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
15 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
16 1197, 1198, 2802, and 2810.5;

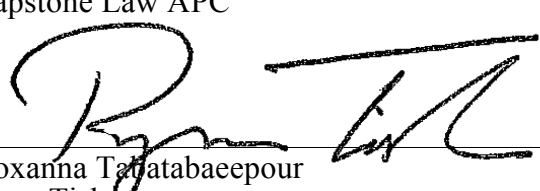
17 5. For pre-judgment and post-judgment interest as provided by law; and

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

21 Dated: August 21, 2023

Respectfully submitted,

Capstone Law APC

23
24 By: 

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Ryan Tish
Alexander Wallin

Attorneys for Plaintiff Chad Sweet