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Attorneys for Plaintiffs DERRIAN AVALOS-ROSADO; LAYLA SALIHI; AND ISABELLA CASTILLO in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DERRIAN AVALOS-ROSADO; LAYLA SALIHI; AND ISABELLA CASTILLO in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff,

v.

NUTMEG BAKERY & CAFÉ 1, a California Corporation; NUTMEG BAKERY & CAFÉ 2, a California Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. 37-2023-00036908-CU-OE-CTL

COMPLAINT FOR:

1. MEAL AND REST PERIOD VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
2. MINIMUM WAGE VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
3. OVERTIME VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
4. WAGE STATEMENT VIOLATIONS PURSUANT TO LABOR CODE § 2698 *et seq.*
5. FAILURE TO REIMBURSE PURSUANT TO LABOR CODE § 2698 *et seq.*
6. FAILURE TO PAY WAGES UPON SEPARATION PURSUANT TO LABOR CODE § 2698 *et seq.*

Demand for Jury Trial

COMES NOW Plaintiffs DERRIAN AVALOS-ROSADO; LAYLA SALIHI; AND ISABELLA CASTILLO ("Plaintiffs"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for their complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may **not** be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiffs' injuries occurred in the County of San Diego, State of California.
3. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant NUTMEG BAKERY & CAFÉ 1 (Referred to herein as "Defendants" or "NUTMEG"), was and is a California Corporation doing business throughout the state, including the County of San Diego, State of California. Plaintiffs are informed and believe and thereon allege that at all relevant times mentioned herein, Defendant NUTMEG BAKERY & CAFÉ 2 (Referred to herein as "Defendants" or "NUTMEG"), was and is a California Corporation doing business throughout the state, including the County of San Diego, State of California. Accordingly, Plaintiffs will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
4. Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and

1 in so acting was functioning as the agent, servant, partner, and employee of the co-defendants,
2 and in doing the actions mentioned below, was acting within the course and scope of his or her
3 authority as such agent, servant, partner, and employee with the permission and consent of the
4 co-defendants. Plaintiffs' injuries as herein alleged were proximately caused by said
5 defendants. Wherever it is alleged herein that any act or omission was done or committed by
6 any specially named Defendant or Defendants, Plaintiffs intend thereby to allege and does
7 allege that the same act or omission was also done and committed by each and every defendant
8 named as a DOE, both separately and in concert with the named Defendant or Defendants.

- 9 5. Plaintiffs are informed and believe and thereon allege that Defendants, and each of them,
10 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
11 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
12 legal entities which were licensed to do and/or were doing business in the County of San
13 Diego, State of California at all times relevant to the subject matter of this action.

14 FACTUAL BACKGROUND

- 15 6. Plaintiff ROSADO was employed by Defendants from approximately January 2023, through
16 May 25, 2023; and Plaintiff SALIHI was employed by Defendants from approximately May,
17 2021, through May 30, 2023. Plaintiff CASTILLO was employed by Defendants from
18 approximately November, 2021, through May 30, 2023. Throughout their employment with
19 Defendants, Plaintiffs performed their jobs in a capable, and competent manner.
- 20 7. Throughout the term of their employment, Plaintiffs and all other aggrieved employees were,
21 and currently are, denied the benefits and protections of the Labor Code due to Defendants'
22 institutionalized pay practices, standard as to all of Defendants' California-based employees.
- 23 8. On June 13, 2023, counsel for Plaintiffs prepared and submitted via online filing a letter to the
24 California Labor & Workforce Development Agency ("LWDA"). A copy of the letter was
25 mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions
26 of the California Labor Code and Business and Professions Code violated by Defendants, as
27 well as the facts and theories in support of Plaintiffs claims. (Please see **Exhibit 1**, a true and
28 correct copy of this letter.)

- 1 9. The statutory time period for the LWDA to investigate and/or respond, and for the employer
2 to respond, has concluded.

3 **REPRESENTATIVE ALLEGATIONS**

- 4 10. As more specifically set forth below, Plaintiffs bring this action in a representative capacity on
5 behalf of all current and former aggrieved employees of Defendants. Code Civ. Proc. § 2699;
6 *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations
7 period, Plaintiffs and all other aggrieved employees were denied the protections and benefits
8 of the Labor Code due to Defendants' standard practices. Throughout their employment,
9 Plaintiffs and all other aggrieved employees were and are denied full and accurate
10 compensation, including overtime compensation, in violation of, *inter alia*, Labor Code
11 sections 510, 1194, and 1197. Plaintiffs and the other aggrieved employees were and are
12 denied Meal and Rest Periods and Meal and Rest Period payments, in violation of, *inter alia*,
13 Labor Code sections 226.7 and 512. Defendants failed to furnish accurate itemized wage
14 statements in violation of, *inter alia*, Labor Code section 226. Defendants failed to reimburse
15 Plaintiffs and other aggrieved employees for necessary business expenditures in violation of,
16 *inter alia*, Labor Code section 2802. Defendants failed to provide all compensation due at
17 termination of employment in violation of, *inter alia*, Labor Code sections 201 through 203.
- 18 11. Plaintiffs bring this action on the grounds that they and other current and former aggrieved
19 employees of Defendants were and are improperly denied the mandated wages resulting from
20 the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The
21 number of current and former aggrieved employees is believed to exceed One-Hundred (100)
22 members.
- 23 12. The approximately One-Hundred (100) aggrieved employees are comprised of Defendants'
24 current or former California-based employees.
- 25 13. The questions of law and fact common to all aggrieved employees arising from Defendants'
26 actions include, among others, the following:
- 27 a. Whether Defendants failed to pay its employees the proper straight-time, overtime, and
28 double time wages due and owing to them;

- 1 b. Whether Defendants failed to pay its employees all compensation due and owing at
2 termination of employment;
- 3 c. Whether Defendants failed to provide its employees with statutorily-compliant Meal
4 and/or Rest Periods, in violation of, *inter alia*, California Labor Code section 512 and
5 226.7, in that Defendants' written policies are not compliant with California law, and
6 Defendants do not allow its employees duty-free Meal and/or Rest Periods on occasion;
- 7 d. Whether Defendants failed to properly provide Meal and Rest Period Premiums in
8 accordance with law;
- 9 e. Whether Defendants failed to properly calculate and pay its employees overtime
10 compensation or Meal and Rest Period Premiums in accordance with law by failing to
11 properly calculate, into the Regular Rate of Pay, the value of all employee benefits and
12 other non-discretionary compensation; and
- 13 f. Whether Defendants failed to properly reimburse its employees for necessary business
14 expenditures for, *inter alia*, cell phone costs and other work supplies, in violation of
15 Labor Code section 2802.
- 16 14. At all times mentioned herein, Defendants were subject to the Labor Codes and Industrial
17 Welfare Commission Wage Orders of the State of California, including, but not limited to,
18 California Labor Code section 2698 *et seq.*
- 19 15. At all times mentioned herein, Defendants are and were "employers" as that term is used
20 within the relevant sections of the California Labor Code.
- 21 16. Plaintiffs have exhausted their administrative remedies and pre-filing requirements pursuant
22 to California Labor Code section 2699.3, and has also fulfilled all notice requirements under
23 the statute.
- 24 17. Throughout the operative limitations period, Plaintiffs and all other aggrieved employees were
25 denied the protections and benefits of the Labor Code and IWC Wage Order(s) due to
26 Defendants' standard practices. Said violations are set forth below.

27 ///

FIRST CAUSE OF ACTION
Meal and Rest Period Violations Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

18. Plaintiffs hereby incorporate by reference paragraphs 1 through 17 as though fully set forth herein.

20. Labor Code section 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.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

21. Under applicable California law, “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 [...] 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” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11050 (11)(A).

22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11050 (11).

23. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (11).

24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11050 (11), (12).

25. Within the operative time period, Defendants failed to possess compliant Meal and Rest Period policies.

- 1 26. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy,
2 and makes no attempt to ensure that its employees are either timely or wholly provided Meal
3 Periods or Rest Periods.
- 4 27. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest
5 Periods, based on order volume and coverage issues.
- 6 28. In addition, Defendants had notice of Plaintiffs working outside of their scheduled and/or
7 reported hours, as well as within Meal and Rest Periods, but failed to provide any
8 compensation for this work-time.
- 9 29. Defendants willfully failed and refused to pay Plaintiffs and all other aggrieved employees one
10 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
11 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 5 § (11),
12 (12).
- 13 30. Any payments made by Defendants for non-compliant Meal Periods were not paid at the
14 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
15 Orders. Instead, these payments were made at an employee's base rate and did not include the
16 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
17 example, non-discretionary compensation and other employee benefits.
- 18 31. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
19 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
20 proven at trial.
- 21 32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
22 on behalf of themselves and all other aggrieved employees by and through Labor Code section
23 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
24 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
25 Prayer For Relief.
- 26 33. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
27 pursuant to Labor Code sections 2699(a) for each of these employees.
- 28 34. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code

1 section 2699(g)(1).

2 **SECOND CAUSE OF ACTION**
3 **Minimum Wage Violations Pursuant to Labor Code § 2698 et seq.**
4 **Representative Action**
5 **(By Plaintiff against Defendants and DOES 1 through 10)**

6 35. Plaintiffs hereby incorporate by reference paragraphs 1 through 34 as though fully set forth
7 herein.

8 36. Defendants failed to pay its employees all compensation due in violation of, among other
9 statutes, Labor Code section 1197. California law holds that the failure to pay for any work
10 time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal.
11 App.4th 314, 323. These violations were caused by and through Defendants' failure to
12 maintain accurate Time Records (as required by California law), to the detriment of the
13 employees. Specifically, although Defendants would receive "to-the-minute" start and end
14 times (from their employees' mandated timekeeping practices), Defendants would thereafter
15 alter - and deduct time from - the Time Records, prior to payment of compensation to the
16 employees. Additionally, the right to receive the proper minimum wage compensation was
17 impacted by Defendants knowingly failing to consider other work performed by the employees,
18 including all time employees were under Defendants' control. These actions, and instructions,
19 caused the employees to lose compensation, including proper minimum wage compensation
20 and overtime compensation. Moreover, Defendants instructed its employees to "self-round"
21 their actual work-times, with a lack of specific instruction as to how to accurately - and
22 neutrally - perform such a function.

23 37. As a result of Defendants' failure to comply with the provisions of the Labor Code, Plaintiffs
24 and all other aggrieved employees have been damaged in an amount to be proven at trial.

25 38. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
26 on behalf of themselves and all other aggrieved employees by and through Labor Code section
27 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
28 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
Prayer For Relief.

1 39. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
2 pursuant to Labor Code sections 2699(a) for each of these employees.

3 40. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
4 section 2699(g)(1).

5 **THIRD CAUSE OF ACTION**
6 **Overtime Violations Pursuant to Labor Code § 2698 et seq.**
7 **Representative Action**
8 **(By Plaintiff against Defendants and DOES 1 through 10)**

9 41. Plaintiffs hereby incorporate by reference paragraphs 1 through 40 as though fully set forth
10 herein.

11 42. Defendants failed to pay Plaintiffs and all other aggrieved employees all compensation,
12 including overtime compensation, due in violation of, among other statutes, Labor Code
13 section 510. These violations occurred due to Defendants' illegal policies, referenced above,
14 whereby employees experienced monetary under-compensation. The systematic failure to
15 provide proper overtime compensation is a violation of California law.

16 43. Additionally, Defendants also failed to provide the actual Overtime Rate of Pay by ignoring
17 certain compensation when calculating the Regular Rate of Pay including, but not limited to,
18 various forms of bonus and/or incentive pay, and the value of employee benefits and employee
19 discounts, in violation of Labor Code section 510.

20 44. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
21 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
22 proved at trial.

23 45. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
24 on behalf of themselves and all other aggrieved employees by and through Labor Code section
25 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
26 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
27 Prayer For Relief.

28 46. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
pursuant to Labor Code sections 2699(a) for each of these employees.

1 47. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
2 section 2699(g)(1).

3 **FOURTH CAUSE OF ACTION**
4 **Wage Statement Violations Pursuant to Labor Code § 2698 et seq.**
5 **Representative Action**
6 **(By Plaintiff against Defendants and DOES 1 through 10)**

7 48. Plaintiffs hereby incorporate by reference paragraphs 1 through 47 as though fully set forth
8 herein.

9 49. Defendants failed to provide Plaintiffs and all other aggrieved employees with accurate
10 itemized wage statements in violation of, among other statutes, Labor Code section 226. These
11 violations include, but are not limited to, Defendants' failure to accurately identify all
12 applicable regular and overtime (including double-time) rates of pay in violation of section
13 226(a)(9), and providing inaccurate representations of both "gross" and "net wages."
14 Defendants also failed to accurately list "all applicable hourly rates in effect during the pay
15 period and the corresponding number of hours worked at each hourly rate," in violation of
16 226(a)(9). Defendants also failed to provide an accurate showing of the "total hours worked,"
17 in violation of Labor Code section 226(a)(2). For example, Defendants had notice of
18 employees working outside of their scheduled and/or reported hours, as well as within Meal
19 and Rest Periods, but did not provide compensation.

20 50. Further, the Defendants' wage statement listings are confusing and employees cannot readily
21 ascertain their total hours worked, applicable rates, and all gross and net wages. As one
22 example, Defendants are apparently using a time calculating system other than "minutes", but
23 without explanation to the employees within the wage statement.

24 51. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
25 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
26 proven at trial.

27 52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
28 on behalf of themselves and all other aggrieved employees by and through Labor Code section
2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover

1 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
2 Prayer For Relief.

3 53. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
4 pursuant to Labor Code sections 2699(a) for each of these employees.

5 54. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
6 section 2699(g)(1).

7 **FIFTH CAUSE OF ACTION**
8 **Failure to Reimburse Pursuant to Labor Code § 2698 et seq.**
9 **Representative Action**
10 **(By Plaintiff against Defendants and DOES 1 through 10)**

11 55. Plaintiffs hereby incorporate by reference paragraphs 1 through 54 as though fully set forth
12 herein.

13 56. Defendants failed to reimburse their employees for all necessary business expenditures
14 incurred in direct consequence of the discharge of their duties in violation of, among other
15 statutes, Labor Code section 2802. These expenditures are the result of, *inter alia*, Defendants'
16 standard policies which require its employees to incur mileage, purchase work supplies, and
17 to use their own cell phones for work-related purposes, without reimbursement.

18 57. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
19 Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be
20 proven at trial.

21 58. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs
22 on behalf of themselves and all other aggrieved employees by and through Labor Code section
23 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover
24 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
25 Prayer For Relief.

26 59. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants
27 pursuant to Labor Code sections 2699(a) for each of these employees.

28 60. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code
section 2699(g)(1).

SIXTH CAUSE OF ACTION
Failure to Pay Wages Upon Separation Pursuant to Labor Code § 2698 et seq.
Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

61. Plaintiffs hereby incorporate by reference paragraphs 1 through 60 as though fully set forth herein.
62. Defendants failed to provide Plaintiffs and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.
63. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiffs and all other aggrieved employees have been damaged in an amount to be proven at trial.
64. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiffs on behalf of themselves and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiffs have complied with all pre-filing requirements, Plaintiffs may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.
65. Plaintiffs seek an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.
66. Plaintiffs also seek an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of all aggrieved employees, prays for judgment as follows:

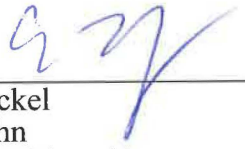
1. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code section 2699(g)(1);
2. For an award of statutory civil penalties pursuant to Labor Code section 2699(f)(2); and
3. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby requests that this matter be heard and decided by trial by jury.

Dated: August 23, 2023

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel

Ryan T. Kuhn

Karoline D. Kitlowski

Attorneys for Plaintiffs DERRIAN AVALOS-
ROSADO; LAYLA SALIHI; AND ISABELLA
CASTILLO in a Representative capacity only, and on
behalf of other members of the general public similarly
situated

Exhibit 1

SULLIVAN & YAECKEL

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June 13, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Derrian Avalos-Rosado; Layla Salihi; and Isabella Castillo v.
Nutmeg Bakery & Café 1; and Nutmeg Bakery & Café 2
Our File No.: 7356

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Nutmeg Bakery & Café 1; and Nutmeg Bakery & Café 2 (hereinafter collectively referred to as “Nutmeg”), in the above referenced matter. This “written notice” is filed on behalf of Mr. Rosado, Ms. Salihi, and Ms. Castillo (hereinafter collectively referred to as “Plaintiffs”) and all current and former non-exempt employees employed by Nutmeg. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by Nutmeg are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a),
226.7, 510, 512, 1194, 1197.1, 1198.5 and 2802, as well as IWC
Wage Order 5, and any other applicable wage orders, codified as Title
8, California Code of Regulations, section 11050 *et seq.*

Facts and theories supporting the allegations: Mr. Rosado was employed as a non-exempt employee for Nutmeg from approximately January 2023, through May 25, 2023. Ms. Salihi was employed as a non-exempt employee for Nutmeg from approximately May, 2021, through May 30, 2023. Ms. Castillo was employed as a non-exempt employee for Nutmeg from approximately November, 2021, through May 30, 2023.

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Throughout the term of Plaintiffs' employment, Nutmeg required Plaintiffs and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- Nutmeg failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, IWC Wage Order 5, and any other applicable wage orders. This illegal action is due, in part, to Nutmeg's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, Nutmeg would instruct Plaintiffs to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, Nutmeg would often require Plaintiffs to work extended hours (beyond scheduled hours), without compensation. Further, Nutmeg would regularly contact Plaintiffs outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.
- Additionally, among other issues, Nutmeg has notice of Plaintiffs, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Plaintiffs were frequently scheduled to be "On Call" outside of when their work shifts ended, but were never compensated for this time. Further, Nutmeg failed to properly calculate and pay overtime at the actual overtime rate of pay, as Nutmeg ignores certain compensation when calculating the Regular Rate of Pay.

Failure to Provide Compliant Meal Periods

- Nutmeg failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, or any other applicable wage orders. For example, Nutmeg does not possess a legal Meal Period policy and makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy the employees were on a given day.
- Nutmeg would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors and/or customers at all times. Nutmeg has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when

employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of section 226.7.” *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, *italics added*. Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks. (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a section 226.7 violation.’” *Kim v. Reins International California, Inc.*, (2020) 9 Cal.5th 73. To be clear, payment of a Meal Period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, Nutmeg failed to pay Meal Period Premiums at the proper rate, as Nutmeg fails to either (1) pay a full hours worth of pay, or (2) properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal.5th 858.

- Nutmeg required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Meal Periods. On occasion, Nutmeg would interrupt, or cut short, its employees’ Meal Periods and require them to return to work.
- Nutmeg illegally retained control over its employees during Meal Periods. For example, Nutmeg required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their phones) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- Nutmeg failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 5, and any other applicable wage orders. For example, Nutmeg does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. Nutmeg makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. Nutmeg would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to customers at all times. Nutmeg has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which Nutmeg would provide a

Rest Period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the Regular Rate of Pay.

- Nutmeg required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during Rest Periods. On occasion, Nutmeg would interrupt, or cut short, its employees’ Rest Periods and require them to return to work. Plaintiffs were required to respond to customers and business related matters during their Rest Periods.
- Finally, Nutmeg illegally retained control over its employees during Rest Periods. For example, Nutmeg required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their telephones) at all times, including during Rest Periods.

Wage Statement Violations

- Nutmeg violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Plaintiffs and other employees were not compensated for all hours worked (due in part to Nutmeg’s requirement that employees list only *scheduled* work-times, not actual work-times.)
- Nutmeg violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, Nutmeg (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. Further, on the rare occasions in which Nutmeg would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- Nutmeg violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Nutmeg does not explain how its system describes “time worked” on the Wage Statement itself. As such, Plaintiffs cannot “readily ascertain” what these figures mean. This is because Nutmeg is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* “.75”) are meant to represent. Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, Nutmeg failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

- Nutmeg failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802, by failing to provide payments for expenses incurred by Plaintiffs, and other non-exempt employees, including expenses for cell-phone costs, necessary work supplies, and mileage.

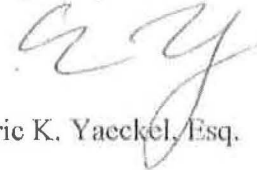
Willful Failure to Provide All Compensation to Ex-Employees

- Nutmeg failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due, in part, to the fact that Nutmeg failed to provide proper compensation for all hours worked, and failed to pay full Meal or Rest Period penalties, as discussed above.

To confirm, Nutmeg is a "person" as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



Eric K. Yaeckel, Esq.

Via Certified U.S. Mail

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