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FILED
 Superior Court of California
 County of Los Angeles

08/17/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES

JUAN CARLOS TORRES, individually,
 and on behalf of other members of the
 general public similarly situated, and as an
 aggrieved employee pursuant to the Private
 Attorney General Act ("PAGA"),

Plaintiff,

vs.

HARD ROCK INTERNATIONAL (USA),
 INC., a Florida corporation; HARD ROCK
 CAFE INTERNATIONAL
 (HOLLYWOOD), INC., a Delaware
 corporation; HARD ROCK
 SACRAMENTO FM, LLC, a Florida
 limited liability company; and DOES 1
 through 10, inclusive,

Defendants.

Case No.: 23STCV11468

**FIRST AMENDED CLASS ACTION
 COMPLAINT & ENFORCEMENT
 ACTION UNDER THE PRIVATE
 ATTORNEYS GENERAL ACT,
 CALIFORNIA LABOR CODE §§ 2698, ET
 SEQ.**

- (1) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (2) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (4) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Juan Carlos Torres, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court, because Defendants filed Statement of
24 Information forms with the California Secretary of State designating a principal place of
25 business in Los Angeles, County of Los Angeles, in accordance with California Corporations
26 Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court
27 because Defendants employ persons in this county, and thus a substantial portion of the
28 transactions and occurrences related to this action occurred in this county.

1 **THE PARTIES**

2 4. Plaintiff Juan Carlos Torres is a resident of Concord, in Contra Costa County,
3 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
4 approximately September 2021 to January 2023. Plaintiff worked as a Food Server at
5 Defendants' Hard Rock Cafe restaurant located in San Francisco, California. During his
6 employment, Plaintiff typically worked nine (9) or more hours per day and five (5) or more
7 days per week. Plaintiff's primary job duties included, without limitation, taking customer
8 orders, preparing food, and serving food to customers.

9 5. HARD ROCK INTERNATIONAL (USA), INC. was and is, upon information
10 and belief, a Florida corporation, and at all times hereinafter mentioned, an employer whose
11 employees are engaged throughout this county and the State of California.

12 6. HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC. was and is,
13 upon information and belief, a Delaware corporation, and at all times hereinafter mentioned,
14 an employer whose employees are engaged throughout this county and the State of California.

15 7. HARD ROCK SACRAMENTO FM, LLC was and is, upon information and
16 belief, a Florida limited liability company, and at all times hereinafter mentioned, an employer
17 whose employees are engaged throughout this county and the State of California.

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

22 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
23 were the partners, agents, owners, or managers of HARD ROCK INTERNATIONAL (USA),
24 INC.; HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.; and HARD ROCK
25 SACRAMENTO FM, LLC at all relevant times.

26 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
27 acts and omissions alleged herein was performed by, or is attributable to, HARD ROCK
28 INTERNATIONAL (USA), INC.; HARD ROCK CAFE INTERNATIONAL

(HOLLYWOOD), INC.; HARD ROCK SACRAMENTO FM, LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “HARD ROCK”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

13. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and class members. Each Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and class members to work and/or “engaged” Plaintiff and class members so as to create a common-law employment relationship. As joint employers of Plaintiff and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiff and class members under the law.

14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class members because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and class members;

- 1 (b) jointly exercised meaningful control over Plaintiff's and class members'
2 wages, hours, and working conditions, including the quantity, quality
3 standards, speed, scheduling, and operative details of the tasks
4 performed by Plaintiff and class members;
- 5 (c) jointly required that Plaintiff and class members perform work which is
6 an integral part of Defendants' businesses; and
- 7 (d) jointly exercised control over Plaintiff and class members as a matter of
8 economic reality in that Plaintiff and class members were dependent on
9 Defendants, who shared the power to set the wages of Plaintiff and class
10 members and determined their working conditions, and who jointly
11 reaped the benefits from the underpayment of their wages and
12 noncompliance with other statutory provisions governing their
13 employment.

14 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
15 there has existed a unity of interest and ownership between Defendants such that any
16 individuality and separateness between the entities has ceased.

17 16. HARD ROCK INTERNATIONAL (USA), INC.; HARD ROCK CAFE
18 INTERNATIONAL (HOLLYWOOD), INC.; HARD ROCK SACRAMENTO FM, LLC; and
19 DOES 1 through 10 are therefore alter egos of each other.

20 17. Adherence to the fiction of the separate existence of Defendants would permit
21 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
22 from liability for the wrongful acts committed by them under the name HARD ROCK.

23 18. Plaintiff further alleges, upon information and belief, that Defendants HARD
24 ROCK INTERNATIONAL (USA), INC.; HARD ROCK CAFE INTERNATIONAL
25 (HOLLYWOOD), INC.; and HARD ROCK SACRAMENTO FM, LLC are alter egos of each
26 other for the following reasons:

- 27 (a) On the California Secretary of State's website
28 (<https://bizfileonline.sos.ca.gov/>), HARD ROCK INTERNATIONAL

(USA), INC.; HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.; and HARD ROCK SACRAMENTO FM, LLC have the same principal and mailing address, which is “5701 STIRLING ROAD, DAVIE, FL 33314”;

(b) According to Statement of Information forms filed with the California Secretary of State, HARD ROCK INTERNATIONAL (USA), INC. and HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC. share the same officers, including, but not limited to:

i. Jon Stephen Lucas, who serves as Chief Executive Officer for HARD ROCK INTERNATIONAL (USA), INC. and HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.; and

ii. Francis Joseph Chesky III, who serves as Secretary for HARD ROCK INTERNATIONAL (USA), INC. and HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.;

(c) On the California Secretary of State’s website, HARD ROCK INTERNATIONAL (USA), INC.; HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.; and HARD ROCK SACRAMENTO FM, LLC share the same agent for service of process, C T CORPORATION SYSTEM; and

(d) On information and belief, HARD ROCK INTERNATIONAL (USA), INC.; HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.; and HARD ROCK SACRAMENTO FM, LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

19. Defendants own and operate a chain of rock and roll themed restaurants, with three (3) locations in California. Upon information and belief, Defendants maintain a single,

1 centralized Human Resources (“HR”) department at their company headquarters in Davie,
2 Florida, which is responsible for the recruiting and hiring of new employees, and
3 communicating and implementing Defendants’ company-wide policies, including timekeeping
4 policies and meal and rest period policies, to employees throughout California.

5 20. In particular, Plaintiff and class members, on information and belief, received
6 the same standardized documents and/or written policies. Upon information and belief, the
7 usage of standardized documents and/or written policies, including new-hire documents,
8 indicate that Defendants dictated policies at the corporate level and implemented them
9 company-wide, regardless of their employees’ assigned locations or positions. Upon
10 information and belief, Defendants set forth uniform policies and procedures in several
11 documents provided at an employee’s time of hire.

12 21. Upon information and belief, Defendants maintain a centralized Payroll
13 department at their company headquarters in Davie, Florida, which processes payroll for all
14 non-exempt, hourly paid employees working for Defendants at their various locations in
15 California, including Plaintiff and class members. Based upon information and belief,
16 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
17 employees in California, irrespective of their work locations. Upon information and belief,
18 Defendants process payroll for departing employees in the same manner throughout the State
19 of California, regardless of the manner in which each employee’s employment ends.

20 22. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

22 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
24 and advisors knowledgeable about California labor and wage law, employment and personnel
25 practices, and about the requirements of California law.

26 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
27 members were not paid for all hours worked because all hours worked were not recorded.

28 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to meal periods in
2 accordance with the California Labor Code and applicable IWC Wage Order or payment of
3 one (1) additional hour of pay at their regular rates of pay when they were not provided with
4 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
5 were not provided with all meal periods or payment of one (1) additional hour of pay at their
6 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
7 period.

8 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to rest periods in
10 accordance with the California Labor Code and applicable IWC Wage Order or payment of
11 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
12 permitted to take a compliant rest period and that Plaintiff and class members were not
13 authorized and permitted to take compliant rest periods or provided with payment of one (1)
14 additional hour of pay at their regular rates of pay when they were not authorized and
15 permitted to take a compliant rest period.

16 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and class members were entitled to be paid at a regular rate
18 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
19 premiums, that included as eligible income all remuneration required by law, including but not
20 limited to, all income derived from incentive pay, nondiscretionary bonuses, mandatory
21 service charges, and/or other forms of compensation, but failed to include all forms of
22 remuneration in calculating the regular rate of pay for Plaintiff and class members.

23 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive certain wages for
25 overtime compensation and that they were not receiving certain wages for overtime
26 compensation.

27 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive at least minimum

1 wages for compensation and that they were not receiving at least minimum wages for work
2 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
3 and class members were not paid at least minimum wages for work done off-the-clock.

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

9 31. 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 California Labor Code and applicable IWC Wage Order, but willfully,
12 knowingly, and intentionally failed to do so.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of all
15 wages earned upon termination of employment. In violation of the California Labor Code,
16 Plaintiff and class members did not receive payment of all wages due, including, but not
17 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick
18 leave pay, within permissible time periods.

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to timely payment of wages
21 during their employment. In violation of the California Labor Code, Plaintiff and class
22 members did not receive payment of all wages, including, but not limited to, overtime wages,
23 minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible
24 time periods.

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to receive sick leave
27 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
28 derived from incentive pay, nondiscretionary bonuses, mandatory service charges, and/or

1 other forms of compensation, and to receive itemized wage statements or separate written
2 statements showing the amount of paid sick leave. In violation of the California Labor Code,
3 Defendants failed to include all forms of remuneration in calculating the regular rate of pay
4 for sick leave pay and failed to provide Plaintiff and class members with written itemized
5 wage statements showing this information.

6 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
8 were entitled to sit when it did not interfere with the performance of their duties and also have
9 seats nearby to use during a lull in tasks that do require moving about or standing. In
10 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
11 provide Plaintiff and/or class members with suitable seating.

12 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive full
14 reimbursement for all business-related expenses and costs they incurred during the course and
15 scope of their employment and that they did not receive full reimbursement of applicable
16 business-related expenses and costs incurred.

17 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that Defendants had a duty to provide
19 Plaintiff and class members with written notice of the material terms of their employment with
20 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

21 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
22 mentioned, Defendants knew or should have known that they had a duty to compensate
23 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
24 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
25 falsely represented to Plaintiff and class members that they were properly denied wages, all in
26 order to increase Defendants' profits.

27 **PAGA REPRESENTATIVE ALLEGATIONS**

28 39. At all times herein set forth, PAGA provides that any provision of law under

1 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
2 assessed and collected by the LWDA for violations of the California Labor Code and
3 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
4 civil action brought on behalf of themselves and other current or former employees pursuant
5 to procedures outlined in California Labor Code section 2699.3.

6 40. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
7 person who was employed by the alleged violator and against whom one or more of the
8 alleged violations was committed.”

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

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

- 15 (a) The aggrieved employee or representative shall give written notice by
16 online filing with the LWDA and by certified mail to the employer of
17 the specific provisions of the California Labor Code alleged to have
18 been violated, including the facts and theories to support the alleged
19 violation.
- 20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The LWDA shall notify the employer and the aggrieved employee or
24 representative by certified mail that it does not intend to investigate the
25 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
26 the postmark date of the aggrieved employee’s notice. Upon receipt of
27 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
28 (65) calendar days of the postmark date of the aggrieved employee’s

1 notice, the aggrieved employee may commence a civil action pursuant
2 to California Labor Code section 2699 to recover civil penalties.

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

- 7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of
9 the specific provisions of the California Labor Code alleged to have
10 been violated (other than those listed in Section 2699.5), including the
11 facts and theories to support the alleged violation.
- 12 (b) An aggrieved employee's notice filed with the LWDA pursuant to
13 2699.3(c) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The employer may cure the alleged violation within thirty-three (33)
16 calendar days of the postmark date of the notice sent by the aggrieved
17 employee or representative. The employer shall give written notice
18 within that period of time by certified mail to the aggrieved employee or
19 representative and by online filing with the LWDA if the alleged
20 violation is cured, including a description of actions taken, and no civil
21 action pursuant to Section 2699 may commence. If the alleged violation
22 is not cured within the 33-day period, the aggrieved employee may
23 commence a civil action pursuant to Section 2699.

24 44. On June 12, 2023, Plaintiff provided written notice by online filing to the
25 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
28 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The

1 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
2 Plaintiff PAGA Case Number LWDA-CM-961465-23. A true and correct copy of Plaintiff's
3 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

7 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,
10 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

11 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare
14 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
15 dollars (\$50) for each underpaid employee for each pay period for which the employee was
16 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
18 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
19 to any other civil or criminal penalty provided by law."

20 48. Defendants, at all times relevant to this complaint, were employers or persons
21 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
22 rights by violating various sections of the California Labor Code as set forth above.

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

26 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
27 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
28 private attorney general, seeks assessment and collection of civil penalties for himself, all

1 other aggrieved employees, and the State of California against Defendants for violations of
2 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,
3 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

4 **CLASS ACTION ALLEGATIONS**

5 51. Plaintiff brings this action on his own behalf, as well as on behalf of each and
6 all other persons similarly situated, and thus seeks class certification under California Code of
7 Civil Procedure section 382.

8 52. All claims alleged herein arise under California law for which Plaintiff seeks
9 relief authorized by California law.

10 53. Plaintiff's proposed class consists of and is defined as follows:

11 All persons who worked for Defendants as non-exempt, hourly
12 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

13 54. Plaintiff's proposed subclass consists of and is defined as follows:

14 All persons who worked for Defendants as non-exempt, hourly
15 paid employees in California and who received at least one wage
16 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

17 55. Members of the Class and Subclass are referred to herein as "class members."

18 56. Plaintiff reserves the right to redefine the Class and Subclass and to add
19 additional subclasses as appropriate based on further investigation, discovery, and specific
20 theories of liability.

21 57. There are common questions of law and fact as to class members that
22 predominate over questions affecting only individual members, including, but not limited to:

- 23 (a) Whether Defendants failed to provide Plaintiff and class members with
24 meal periods;
- 25 (b) Whether Defendants failed to authorize and permit Plaintiff and class
26 members to take rest periods;
- 27 (c) Whether Defendants failed to include all forms of remuneration in the
28 regular rate of pay as required by law for purposes of paying overtime

1 wages and/or meal and rest period premiums to Plaintiff and class
2 members;

3 (d) Whether Defendants required Plaintiff and class members to work over
4 eight (8) hours per day, over twelve (12) hours per day, or over forty
5 (40) hours per week and failed to pay all legally required overtime
6 compensation to Plaintiff and class members;

7 (e) Whether Defendants failed to pay Plaintiff and class members at least
8 minimum wages for all hours worked;

9 (f) Whether Defendants provided Plaintiff and class members with
10 complete and accurate wage statements as required by California Labor
11 Code section 226(a);

12 (g) Whether Defendants maintained accurate payroll records as required by
13 California Labor Code section 1174(d);

14 (h) Whether Defendants failed to pay earned overtime wages, minimum
15 wages, meal and rest period premiums, and/or sick leave pay due to
16 Plaintiff and class members upon their discharge;

17 (i) Whether Defendants failed timely to pay overtime wages, minimum
18 wages, meal and rest period premiums, and/or sick leave pay due to
19 Plaintiff and class members during their employment;

20 (j) Whether Defendants failed to properly calculate the regular rate of pay
21 upon which Plaintiff's and class members' sick leave rate of pay was
22 based, and failed to provide Plaintiff and class members with written
23 notice of paid sick leave;

24 (k) Whether Defendants failed to provide Plaintiff and/or class members
25 with suitable seating;

26 (l) Whether Defendants failed to reimburse Plaintiff and class members for
27 necessary and required business-related expenditures and/or losses
28 incurred by them in the scope of their employment;

- 1 (m) Whether Defendants failed to provide written notice of information
2 material to Plaintiff's and class members' employment with Defendants;
3 (n) Whether Defendants engaged in unlawful and unfair business practices
4 in violation of California Business & Professions Code sections 17200,
5 *et seq.*; and
6 (o) The appropriate amount of damages, restitution, or monetary penalties
7 resulting from Defendants' violations of California law.

8 58. There is a well-defined community of interest in the litigation and the class
9 members are readily ascertainable:

- 10 (a) Numerosity: The class members are so numerous that joinder of all
11 members would be unfeasible and impractical. The membership of the
12 entire class is unknown to Plaintiff at this time; however, the class is
13 estimated to be greater than one hundred (100) individuals and the
14 identity of such membership is readily ascertainable by inspection of
15 Defendants' employment records.
16 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
17 protect the interests of each class member with whom he has a well-
18 defined community of interest, and Plaintiff's claims (or defenses, if
19 any) are typical of all class members as demonstrated herein.
20 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
21 protect the interests of each class member with whom he has a well-
22 defined community of interest and typicality of claims, as demonstrated
23 herein. Plaintiff acknowledges that he has an obligation to make known
24 to the Court any relationship, conflicts or differences with any class
25 member. Plaintiff's attorneys, the proposed class counsel, are versed in
26 the rules governing class action discovery, certification, and settlement.
27 Plaintiff has incurred, and throughout the duration of this action, will
28 continue to incur costs and attorneys' fees that have been, are, and will

1 be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

3 (d) Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve
5 economies of time, effort, and expense as compared with separate
6 lawsuits, and will avoid inconsistent outcomes because the same issues
7 can be adjudicated in the same manner and at the same time for the
8 entire class.

9 (e) Public Policy Considerations: Employers in the State of California
10 violate employment and labor laws every day. Current employees are
11 often afraid to assert their rights out of fear of direct or indirect
12 retaliation. Former employees are fearful of bringing actions because
13 they believe their former employers might damage their future
14 endeavors through negative references and/or other means. Class
15 actions provide the class members who are not named in the complaint
16 with a type of anonymity that allows for the vindication of their rights
17 while simultaneously protecting their privacy.

18 **FIRST CAUSE OF ACTION**

19 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

20 **Violations**

21 **(Against all Defendants)**

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

24 60. At all relevant times herein set forth, California Labor Code section 512(a)
25 provides that an employer may not require, cause, or permit an employee to work for a period
26 of more than five (5) hours per day without providing the employee with a meal period of not
27 less than thirty (30) minutes, except that if the total work period per day of the employee is
28 not more than six (6) hours, the meal period may be waived by mutual consent of both the

1 employer and the employee. Under California law, first meal periods must start after no more
2 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

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

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

13 63. First, during the relevant time period, on information and belief, Defendants
14 had, and continue to have, a company-wide policy and/or practice of understaffing their
15 restaurant locations while assigning heavy workloads, resulting in a failure to provide Plaintiff
16 and class members with adequate meal period coverage. Because Defendants did not employ
17 or staff a sufficient number of employees to meet customer demand, there was no one
18 available to relieve employees needing meal period coverage, and Plaintiff and class members
19 were not always afforded timely, uninterrupted 30-minute meal periods during shifts when
20 they were entitled to receive a meal period. Additionally, Defendants, on a company-wide
21 basis, had a practice of failing to schedule meal periods, which further caused Plaintiff and
22 class members to not be relieved of their duties for compliant meal periods.

23 64. As a result, Plaintiff and class members have had to work through all or part of
24 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
25 time before taking meal periods. For example, Plaintiff was sometimes required to miss his
26 meal periods altogether in order to meet the restaurant's customer demand. When he was able
27 to take a meal period, Plaintiff's meal periods were sometimes taken late, after having worked
28 in excess of five (5) hours into his shift, in order to finish his assigned duties. Moreover,

1 Defendants did not provide Plaintiff and class members with second 30-minute meal periods
2 on days that they worked in excess of ten (10) hours in one day. During his employment,
3 Plaintiff worked shifts in excess of ten (10) or more hours per day but was not provided a
4 second 30-minute meal period. Plaintiff and class members did not sign valid meal period
5 waivers on days that they were entitled to meal periods and were not relieved of all duties.

6 65. At all times herein mentioned, Defendants knew or should have known that, as
7 a result of these policies, Plaintiff and class members were prevented from being relieved of
8 all duties and required to perform some of their assigned duties during meal periods.
9 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
10 members meal period premiums when meal periods were late, interrupted, shortened, and/or
11 missed.

12 66. Moreover, Defendants engaged in a company-wide practice and/or policy of
13 not paying all meal period premiums owed when compliant meal periods are not provided.
14 Because of this practice and/or policy, Plaintiff and class members have not received premium
15 pay for all missed, late, and interrupted meal periods.

16 67. Furthermore, to the extent that Defendants did pay Plaintiff and class members
17 for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and class
18 members at the correct rate of pay for premiums because Defendants systematically failed to
19 include all forms of compensation, such as incentive pay, nondiscretionary bonuses,
20 mandatory service charges, and/or other forms of remuneration, in the regular rate of pay.
21 Therefore, during times when Plaintiff and class members received meal period premiums and
22 these other forms of pay, Defendants to pay full meal period premiums by paying a lower rate
23 than required.

24 68. For example, Defendants paid Plaintiff and class members mandatory service
25 charges which were listed on Plaintiff's and class members' wage statements as "SERVICE
26 CHG/". During pay periods that Plaintiff and class members were paid meal period
27 premiums, Defendants did not incorporate the mandatory service charges into Plaintiff's and
28 class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of

1 pay for meal period premiums. Specifically, Defendants paid Plaintiff and class members
2 meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.
3 As a result, Defendants failed to provide Plaintiff and class members compliant meal periods
4 in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full
5 meal period premiums due.

6 69. Defendants' conduct violates the applicable IWC Wage Order, and California
7 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
8 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
9 rate of compensation for each work day that the meal period was not provided.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 12 **(Against all Defendants)**

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

15 71. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
17 members' employment by Defendants.

18 72. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

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

1 relieve their employees of all duties—including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
4 Labor Code section 226.7(c), Plaintiff and class members 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 74. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
9 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
10 practices of understaffing while assigning heavy workloads prevented Plaintiff and class
11 members from being relieved of all duty to take rest periods. Additionally, Defendants failed
12 to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest
13 period coverage, further led to Plaintiff and class members not being authorized and permitted
14 to take rest periods.

15 75. Furthermore, upon information and belief, Defendants maintained and
16 implemented a company-wide on-premises rest period policy, which effectively required that
17 Plaintiff and class members remain on the premises during their rest periods. Because
18 Plaintiff and class members were restricted from leaving Defendants’ premises during rest
19 periods, they were denied the ability to use their rest periods freely for their own purposes,
20 such as completing personal errands. Thus, Defendants effectively maintained control over
21 Plaintiff and class members during rest periods.

22 76. As a result of Defendants’ practices and policies, Plaintiff and class members
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
24 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
25 throughout his employment, Plaintiff had to forego some of his rest periods because the
26 restaurant was busy, and he did not have sufficient rest period coverage.

27 77. Defendants have also engaged in a company-wide practice and/or policy of not
28 paying rest period premiums owed when compliant rest periods are not authorized and

1 permitted. Because of this practice and/or policy, Plaintiff and class members have not
2 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
3 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
4 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
5 premiums because Defendants failed to include all forms of compensation, such as incentive
6 pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of
7 remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiff and class
8 members rest periods and failed to pay them rest period premiums due, in violation of Labor
9 Code sections 226.7 and 516, and the applicable IWC Wage Order

10 78. Defendants' conduct violates the applicable IWC Wage Order and California
11 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
12 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
13 compensation for each work day that a compliant rest period was not authorized and
14 permitted.

15 **THIRD CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 17 **(Against all Defendants)**

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

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

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

1 82. Specifically, the applicable IWC Wage Order provides that Defendants are and
2 were required to pay Plaintiff and class members working more than eight (8) hours in a day
3 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
4 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
5 workweek.

6 83. The applicable IWC Wage Order further provides that Defendants are and were
7 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
8 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
9 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
10 employee, including nondiscretionary bonuses and incentive pay.

11 84. California Labor Code section 510 codifies the right to overtime compensation
12 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
13 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
14 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
15 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
16 in a day on the seventh (7th) day of work.

17 85. During the relevant time period, Defendants willfully failed to pay all overtime
18 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
19 class members were not paid overtime premiums for all of the hours they worked in excess of
20 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
21 hours in a week, because all hours worked were not recorded.

22 86. Defendants had, and continue to have, a company-wide policy and/or practice
23 of requiring Plaintiff and class members to perform tasks off-the-clock outside of their shifts
24 or on their days off, such as watching training videos. For example, Defendants required
25 Plaintiff to complete an online training module on Defendants' company culture and values,
26 and an online training module on Defendants' guest loyalty rewards program, while he was at
27 home, but was not compensated for this time. Defendants knew or should have known that as
28 a result of these company-wide practices and/or policies, Plaintiff and class members were

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

6 87. Furthermore, Defendants did not pay Plaintiff and class members the correct
7 overtime rate for the recorded overtime hours that they generated. As set forth above, in
8 addition to an hourly wage, Defendants paid Plaintiff and class members incentive pay,
9 nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration.
10 However, in violation of the California Labor Code, Defendants failed to incorporate all
11 compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges,
12 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes
13 of calculating the overtime wage rate. Therefore, during times when Plaintiff and class
14 members worked overtime and received these other forms of pay, Defendants failed to pay all
15 overtime wages by paying a lower overtime rate than required. Specifically, Defendants paid
16 Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular
17 rate of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
18 remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and class
19 members on a company-wide basis.

20 88. Defendants' failure to pay Plaintiff and class members the balance of overtime
21 compensation as required by California law, violates the provisions of California Labor Code
22 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
23 members are entitled to recover from Defendants their unpaid overtime compensation, as well
24 as interest, costs, and attorneys' fees.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)

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

90. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

91. As set forth above, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to complete online training modules outside of their scheduled shifts or on their days off, but did not compensate them for this time.

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

93. Defendants’ failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

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

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

12 96. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
16 applicable hourly rates in effect during the pay period, including rates of pay for overtime
17 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
18 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
19 226(a)(2), 226(a)(5), and 226(a)(9).

20 97. First, Defendants issued wage statements to Plaintiff and Subclass members
21 that failed to correctly list all applicable hourly rates in effect during the pay period, namely,
22 correct overtime rates of pay and the corresponding number of hours worked at the overtime
23 rate in violation of section 226(a)(9). For example, on 07/22/2022, Defendants issued a wage
24 statement to Plaintiff that incorrectly indicates he earned \$260.47 for working 12.68 hours at
25 an “OVERTIME” rate of \$33.5000, when the correct amount should be \$424.78 when
26 calculated using that hourly rate. As another example, Defendants issued a wage statement to
27 Plaintiff on 12/02/2022 that incorrectly indicates he earned \$122.50 for working 6.98 hours at
28 an “OVERTIME” rate of \$33.9800, when the correct amount should be \$237.18 when

1 calculated using that hourly rate. In addition to being unlawful, this practice makes it
2 extremely difficult for employees to determine whether they are being paid correctly or not.

3 98. Second, because Defendants did not record the time Plaintiff and Subclass
4 members spent working off the clock, Defendants did not list the correct amount of gross
5 wages and net wages earned by Plaintiff and Subclass members in compliance with sections
6 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
7 number of hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2),
8 and failed to list the applicable hourly rates of pay in effect during the pay period and the
9 corresponding accurate number of hours worked at each hourly rate, in violation of section
10 226(a)(9).

11 99. Third, because Defendants did not calculate Plaintiff's and Subclass members'
12 regular rate of pay correctly for purposes of paying overtime wages, meal and rest period
13 premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in
14 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
15 amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list
16 all applicable hourly rates in effect during the pay period, namely, correct rates of pay for
17 overtime wages, meal and rest premiums, and/or paid sick leave, in violation of section
18 226(a)(9).

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

27 101. California Labor Code section 1174(d) provides that "[e]very person employing
28 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
7 members showing the daily hours they worked and the wages paid thereto as a result of failing
8 to record the off-the-clock hours that they worked.

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

22 103. Plaintiff and Subclass members are entitled to recover from Defendants the
23 greater of their actual damages caused by Defendants’ failure to comply with California Labor
24 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
25 employee.

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SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

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

105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or 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.

106. On information and belief, Defendants have a company-wide practice and/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, Defendants terminated Plaintiff on or about January 16, 2023; however, Defendants did not provide Plaintiff with his final paycheck until on or about January 26, 2023. Thus, Defendants failed to pay Plaintiff his final wages immediately, in violation of California Labor Code section 201.

107. Additionally, Defendants willfully failed to pay Plaintiff and class members 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 sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

108. Defendants' failure to pay Plaintiff and class members 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

1 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
2 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
3 thirty (30) day maximum pursuant to California Labor Code section 203.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 6 **Employment**

7 **(Against all Defendants)**

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

10 110. This cause of action is dependent upon, and wholly derivative of, the overtime
11 wages, minimum wages, meal and rest period premiums, and/or sick leave pay that were not
12 timely paid to Plaintiff and class members during their employment.

13 111. At all times relevant herein set forth, Labor Code section 204 provides that all
14 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
15 days, inclusive, of any calendar month, other than those wages due upon termination of an
16 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
17 the month during which the labor was performed. Labor Code section 204 further provides
18 that all wages earned by any person in any employment between the sixteenth (16th) and the
19 last day, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
21 month.

22 112. At all times relevant herein, Labor Code section 204 provides that all wages
23 earned for labor in excess of the normal work period shall be paid no later than the payday for
24 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
25 204 provides that the requirements of this section are deemed satisfied by the payment of
26 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
27 seven (7) calendar days following the close of the payroll period.

28 113. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 class members all wages due including, but not limited to, overtime wages, minimum wages,
2 meal and rest period premiums, and/or sick leave pay, within the time periods specified by
3 California Labor Code section 204.

4 114. Defendants' failure to pay Plaintiff and class members all wages due violates
5 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
6 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

7 **EIGHTH CAUSE OF ACTION**

8 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 9 **(Against all Defendants)**

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

12 116. At all times herein set forth, California Labor Code section 2802 provides that
13 an employer must reimburse employees for all necessary expenditures and losses incurred by
14 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
15 to prevent employers from passing off their cost of doing business and operating expenses on
16 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
17 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen the
18 employer requires the use of tools or equipment or they are necessary to the performance of a
19 job, such tools and equipment shall be provided and maintained by the employer, except that
20 an employee whose wages are at least two (2) times the minimum wage may provide and
21 maintain hand tools and equipment customarily required by the particular trade or craft."
22 IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the
23 employer to be worn by the employee as a condition of employment, such uniforms shall be
24 provided and maintained by the employer."

25 117. First, during the relevant time period, Defendants had a company-wide policy
26 of requiring Plaintiff and class members to utilize their own personal mobile devices,
27 including cellular phones, to carry out their job duties, but Defendants failed to reimburse
28 them for the costs of their work-related mobile device expenses. For example, Plaintiff and

1 class members were required to use their personal mobile devices to communicate with
2 management via phone calls and/or text messages regarding scheduling and to complete
3 online training modules. Although Defendants required Plaintiff and class members to utilize
4 their personal mobile devices to carry out their work-related responsibilities, Defendants
5 failed to reimburse them for these costs.

6 118. Second, during the relevant time period, Defendants, on a company-wide basis,
7 required Plaintiff and class members to obtain and pay for certain certifications, which were
8 required for their continued employment, as well as associated costs such as training and/or
9 examination fees. For example, Plaintiff complied with this requirement and spent money to
10 obtain a food handler card and Alcohol Beverage Control Certificate, but Defendants did not
11 reimburse him for the costs of obtaining the certifications. Thus, Defendants failed to
12 reimburse Plaintiff and class members for the costs of obtaining these certifications, including
13 training and/or examination fees.

14 119. Third, during the relevant time period, Defendants, on a company-wide basis,
15 required Plaintiff and class members to report to work in clean and presentable uniforms
16 bearing the “Hard Rock” company logo and name, including uniform t-shirts and aprons.
17 However, Defendants failed to provide Plaintiff and class members with an adequate number
18 of uniform items in relation to the tasks they were required to perform, Plaintiff and class
19 members had to wash their uniforms more frequently than they otherwise would do laundry,
20 and incur expenses in doing so. For example, due to the nature of restaurant work, Plaintiff’s
21 uniform t-shirts and aprons would become stained with grease, sweaty, soiled, and/or acquire
22 an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As
23 a result, he had to wash his uniform t-shirts and aprons separately from his regular clothing,
24 and would spend money at the laundromat for the upkeep of his uniform. Thus, Defendants
25 failed to maintain the uniforms they required Plaintiff and class members to wear during their
26 shifts and forced them to incur the cost of maintaining employee uniforms.

27 120. Defendants could have provided Plaintiff and class members with the actual
28 equipment for use on the job, such as company mobile devices, and an adequate number of

1 uniforms or access to laundering services. Or, Defendants could have reimbursed employees
2 for the costs of their mobile device usage, certification fees, and laundering expenses or
3 provided a uniform maintenance allowance. Instead, Defendants passed these operating costs
4 off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two
5 (2) times the minimum wage.

6 121. Defendants' company-wide policy and/or practice of passing on their operating
7 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
8 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
9 business-related expenses and costs.

10 122. Plaintiff and class members are entitled to recover from Defendants their
11 business-related expenses incurred during the course and scope of their employment, plus
12 interest.

13 **NINTH CAUSE OF ACTION**

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

15 **(Against all Defendants)**

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

18 124. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
21 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
22 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
23 those Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516,
24 1182.12, and 2810.5.

25 125. Defendants' conduct, as alleged herein, violates numerous sections of the
26 California Labor Code, including, but not limited to, the following:

- 27 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
28 applicable IWC Wage Order for Defendants' failure to provide Plaintiff

- 1 and other aggrieved employees with meal periods, as alleged herein;
- 2 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the
- 3 applicable IWC Wage Order for Defendants' failure to authorize and
- 4 permit Plaintiff and other aggrieved employees to take rest periods, as
- 5 alleged herein;
- 6 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC
- 7 Wage Order for Defendants' failure to compensate Plaintiff and other
- 8 aggrieved employees with all required overtime pay, as alleged herein;
- 9 (d) Violation of Labor Code sections 226.7, 510, and 1198, and the
- 10 applicable IWC Wage Order for Defendants' failure to include all forms
- 11 of remuneration in the "regular rate" of pay as required by law for
- 12 purposes of paying overtime wages and/or meal and rest period
- 13 premiums, to Plaintiff and other aggrieved employees, as alleged herein;
- 14 (e) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
- 15 1198, and the applicable IWC Wage Order for Defendants' failure to
- 16 compensate Plaintiff and other aggrieved employees with at least
- 17 minimum wages for all hours worked, as alleged herein;
- 18 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
- 19 IWC Wage Order for failure to provide accurate and complete wage
- 20 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
- 22 IWC Wage Order for failure to maintain payroll records, as alleged
- 23 herein;
- 24 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
- 25 earned wages upon termination, as alleged herein;
- 26 (i) Violation of Labor Code section 204 for failure to pay all earned wages
- 27 during employment, as alleged herein;
- 28 (j) Violation of Labor Code sections 246 and 248.6 for failure to properly

1 calculate the sick leave rate paid to Plaintiff and other aggrieved
2 employees and for failure to provide written notice of paid sick leave to
3 Plaintiff and other aggrieved employees, as set forth below;

4 (k) Violation of Labor Code section 1198 for failing to provide suitable
5 seating to Plaintiff and/or other aggrieved employees, as set forth below;

6 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
7 and other aggrieved employees for all business expenses necessarily
8 incurred, as alleged herein; and

9 (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
10 provide written notice of information material to Plaintiff's and other
11 aggrieved employees' employment with Defendants, as set forth below.

12 126. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
13 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
14 days from the commencement of employment with paid sick days, to be accrued at least one
15 hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must
16 provide an employee with written notice that sets forth the amount of paid sick leave
17 available, or paid time off that an employer provides in lieu of sick leave, for use on either the
18 employee's itemized wage statement or in a separate written statement provided on the
19 designated pay date with the employee's wages. Pursuant to California Labor Code section
20 246(i), employers must provide an employee with notice that sets forth the amount of paid
21 sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on
22 either the employee's itemized wage statement or in a separate written statement provided on
23 the designated pay date with the employee's wage statement. Further, Labor Code section
24 246(l) provides that an employer shall calculate paid sick leave by using one of two
25 calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same
26 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
27 whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick
28 time for nonexempt employees shall be calculated by dividing the employee's total wages, not

1 including overtime premium pay, by the employee's total hours worked in the full pay periods
2 of the prior 90 days of employment."

3 127. At all relevant times herein, California Labor Code section 248.6 provides
4 covered employees with COVID-19 supplemental paid sick leave. Effective through
5 December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid
6 sick leave shall be set forth separately from paid sick days and that an "employer shall provide
7 an employee with written notice that sets forth the amount of COVID-19 supplemental paid
8 sick leave that the employee has used through the pay period in which it was due to be paid on
9 either the employee's itemized wage statement . . . or in a separate written statement provided
10 on the designated pay date with the employee's payment of wages. The employer shall list
11 zero hours used if a worker has not used any COVID-19 supplemental paid sick leave."

12 Further, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19
13 supplemental paid sick leave shall be compensated at a rate equal to the following: 1)
14 "[c]alculated in the same manner as the regular rate of pay for the workweek in which the
15 employee uses paid sick time, whether or not the employee actually works overtime in that
16 workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including
17 overtime premium pay, by the employee's total nonovertime hours worked in the full pay
18 periods occurring within the prior 90 days of employment; provided that, for nonexempt
19 employees paid by piece rate, commission or other method that uses all hours to determine the
20 regular rate of pay, total wages, not including overtime premium pay, shall be divided by all
21 hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this
22 subdivision."

23 128. During the relevant time period, Defendants did not pay Plaintiff and other
24 aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly
25 wage, Defendants paid Plaintiff and other aggrieved employees incentive pay,
26 nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration.
27 However, in violation of the California Labor Code, Defendants failed to incorporate all
28 remunerations, including incentive pay, nondiscretionary bonuses, and/or mandatory service

1 charges, into the calculation of the regular rate of pay for purposes of calculating the sick
2 leave pay rate. Therefore, during times when Plaintiff and other aggrieved employees took
3 sick leave and received these other forms of pay, Defendants failed to pay all sick leave
4 benefits by paying a lower sick leave pay rate than required. Specifically, Defendants paid
5 Plaintiff and other aggrieved employees sick leave based on their hourly rate of pay instead of
6 their regular rate of pay.

7 129. Moreover, during the relevant time period, Defendants failed, on a company-
8 wide basis, to provide Plaintiff and other aggrieved employees with written notice on all wage
9 statements that listed the amount of COVID-19 supplemental paid sick leave used by them.

10 130. Defendants' failure to properly calculate the sick leave rates of pay based on all
11 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
12 aggrieved employees on a company-wide basis in violation of California Labor Code sections
13 246(l) and 248.6(b)(3)(A). Moreover, Defendants' systematic failure to provide written notice
14 of COVID-19 supplemental paid sick leave benefits to Plaintiff and other aggrieved
15 employees is in violation of Labor Code section 248.6(d). Plaintiff and other aggrieved
16 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
17 248.5 and/or 2699(a), (f), and (g).

18 131. At all relevant times herein, California Labor Code section 1198 makes it
19 illegal to employ an employee under conditions of labor that are prohibited by the applicable
20 IWC Wage Order. California Labor Code section 1198 requires that ". . . the standard
21 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
22 employees. The employment of any employee . . . under conditions of labor prohibited by the
23 order is unlawful."

24 132. California Code of Regulations, Title 8, section 11050(14)(A) provides that
25 "[a]ll working employees shall be provided with suitable seats when the nature of the work
26 reasonably permits the use of seats."

27 133. Plaintiff alleges that Defendants' California restaurants are generally similar in
28 their layout and design and there was, and continues to be space behind host stands to allow

1 for the presence and use of a seat or stool by other aggrieved employees (with reasonable or
2 no modification to these work areas) during the performance of their work duties. Defendants
3 could have provided other aggrieved employees with a seat or stool at their cash wraps, but
4 instead denied employees seating and forces other aggrieved employees to stand throughout
5 the day.

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

11 135. During the relevant time period, Defendants violated California Labor Code
12 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
13 aggrieved employees were not allowed to sit, even when the nature of the work would
14 reasonably permit the use of seats, nor were they provided with suitable seats. Defendants'
15 management did not inform other aggrieved employees that they were allowed to sit down,
16 provide any means for them to sit down, or mention any policy regarding sitting.

17 136. As a result of Defendants' company-wide policy and/or practice of prohibiting
18 employees from sitting during their shifts and failure to provide suitable seating, other
19 aggrieved employees were forced to stand during shifts and denied seats. Defendants' failure
20 to provide suitable seating to other aggrieved employees violated and continues to violate
21 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).
22 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
23 Code sections 2699(a), (f), and (g).

24 137. California Code of Regulations, Title 8, section 11050(14)(B) provides that
25 "[w]hen employees are not engaged in the active duties of their employment and the nature of
26 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
27 proximity to the work area and employees shall be permitted to use such seats when it does
28 not interfere with the performance of their duties."

1 138. During the relevant time period, Defendants violated California Labor Code
2 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because
3 Plaintiff and/or other aggrieved employees were not allowed to sit, even during lulls in their
4 work duties, nor were they provided with suitable seats in reasonable proximity to their work
5 areas.

6 139. As stated, Plaintiff alleges that Defendants' California restaurants are generally
7 similar in their layout and design and there was, and continues to be, space near their work
8 areas (with reasonable or no modification to these work areas) to allow for the presence and
9 use of a seat or stool by Plaintiff and/or other aggrieved employees during lulls in operation.
10 Defendants could have provided Plaintiff and/or other aggrieved employees with a seat or
11 stool in their work areas, but instead denied Plaintiff and/or other aggrieved employees
12 suitable seating altogether and effectively forced Plaintiff and other aggrieved employees to
13 stand throughout the day.

14 140. Defendants did not provide Plaintiff and/or other aggrieved employees with
15 seats or stools in reasonable proximity to their work areas to allow them to use seats when it
16 would not interfere with the performance of their duties for times when they were not engaged
17 in active duties that require standing. In other words, to the extent Plaintiff and/or other
18 aggrieved employees engaged in duties in which the nature of the work required standing,
19 Defendants denied them the use of seats nearby during lulls in their work duties. Moreover,
20 Defendants did not inform Plaintiff and/or other aggrieved employees of their rights to a seat
21 or stool under California law.

22 141. As a result of Defendants' company-wide policy and/or practice prohibiting
23 employees from sitting at any time, even when they were not engaged in active duties
24 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
25 work areas, Plaintiff and/or other aggrieved employees were forced to stand during shifts and
26 denied seats. Defendants' failure to provide suitable seating to Plaintiff and/or other
27 aggrieved employees violated and continues to violate California Labor Code section 1198
28 and IWC Wage Order No. 5-2001, subdivision 14(B). Plaintiff and/or other aggrieved

1 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
2 2699(a), (f), and (g).

3 142. At all relevant times herein, California's Wage Theft Prevention Act was
4 enacted to ensure that employers provide employees with basic information material to their
5 employment relationship at the time of hiring, and to ensure that employees are given written
6 and timely notice of any changes to basic information material to their employment. Codified
7 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
8 time of hiring, an employer must provide written notice to employees containing basic and
9 material payroll information, including, among other things, the rate(s) of pay and basis
10 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
11 including any rates for overtime, the regular payday designated by the employer, and any
12 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
13 Code § 2810.5(a)(1)(A)-(C).

14 143. At all relevant times, on information and belief, Defendants failed, on a
15 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
16 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
17 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of
18 basic information regarding their employment with Defendants is in violation of Labor Code
19 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **TENTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

23 **Unlawful Business Practices**

24 **(Against all Defendants)**

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

27 145. Defendants are "persons" as defined by California Business & Professions
28 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,

1 and/or associations.

2 146. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
3 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
4 suffered injury in fact and has lost money as a result of Defendants' unlawful business
5 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
6 meaning of Code of Civil Procedure section 1021.5.

7 147. Defendants' activities, as alleged herein, are violations of California law, and
8 constitute unlawful business acts and practices in violation of California Business &
9 Professions Code sections 17200, *et seq.*

10 148. A violation of California Business & Professions Code sections 17200, *et seq.*
11 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
12 policies and practices have violated state law in at least the following respects:

- 13 (a) Failing to provide all meal periods to Plaintiff and class members in
14 violation of California Labor Code sections 226.7, 512(a), 516, and
15 1198, and the applicable IWC Wage Order, as alleged herein;
- 16 (b) Failing to authorize and permit Plaintiff and class members to take all
17 rest periods in violation of California Labor Code sections 226.7, 516,
18 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 19 (c) Failing to include all forms of remuneration in the regular rate of pay as
20 required by law for purposes of paying overtime wages and/or meal and
21 rest period premiums to Plaintiff and class members, in violation of
22 California Labor Code sections 226.7, 510, and 1198, and the applicable
23 IWC Wage Order, as alleged herein;
- 24 (d) Requiring non-exempt, hourly paid employees, including Plaintiff and
25 class members, to work overtime without paying them proper
26 compensation in violation of California Labor Code sections 510 and
27 1198, and the applicable IWC Wage Order, as alleged herein;
- 28 (e) Failing to pay at least minimum wage to Plaintiff and class members in

violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;

(f) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;

(g) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;

(h) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of California Labor Code section 246(l), and failing to provide written notice of paid sick leave benefits in violation of California Labor Code section 248.6(d), as set forth below;

(i) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein; and

(j) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

149. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid

1 sick time, whether or not the employee actually works overtime in that workweek[;]” or 2)
2 “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s
3 total wages, not including overtime premium pay, by the employee’s total hours worked in the
4 full pay periods of the prior 90 days of employment.”

5 150. Effective through December 31, 2022, Labor Code section 248.6(d) provides
6 that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days
7 and that an “employer shall provide an employee with written notice that sets forth the amount
8 of COVID-19 supplemental paid sick leave that the employee has used through the pay period
9 in which it was due to be paid on either the employee’s itemized wage statement . . . or in a
10 separate written statement provided on the designated pay date with the employee’s payment
11 of wages. The employer shall list zero hours used if a worker has not used any COVID-19
12 supplemental paid sick leave.”

13 151. During the relevant time period, Defendants did not pay Plaintiff and class
14 members the correct sick leave rates of pay. Defendants failed to correctly use either method
15 of calculation under Labor Code section 246(l) to determine Plaintiff’s and class members’
16 sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and
17 class members incentive pay, nondiscretionary bonuses, mandatory service charges, and/or
18 other forms of remuneration. However, in violation of the California Labor Code, Defendants
19 failed to incorporate all remunerations, including incentive pay, nondiscretionary bonuses,
20 and/or mandatory service charges, into the calculation of the regular rate of pay for purposes
21 of calculating the sick leave pay rate. Therefore, during times when Plaintiff and class
22 members took sick leave and received these other forms of pay, Defendants failed to pay all
23 sick leave benefits by paying a lower sick leave pay rate than required. Specifically,
24 Defendants paid Plaintiff and class members sick leave based on their hourly rate of pay
25 instead of their regular rate of pay.

26 152. Moreover, during the relevant time period, Defendants failed, on a company-
27 wide basis, to provide Plaintiff and class members with written notice on all wage statements
28 that listed the amount of COVID-19 supplemental paid sick leave used by them.

153. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class members on a company-wide basis in violation of California Labor Code section 246(l). Moreover, Defendants' systematic failure to provide written notice of COVID-19 supplemental paid sick leave benefits to Plaintiff and class members is in violation of Labor Code section 248.6(d).

154. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

155. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

156. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

157. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by

1 Defendants during a period that commences four years prior to the filing of this complaint; a
2 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
3 class members; and an award of attorneys' fees pursuant to California Code of Civil
4 Procedure section 1021.5 and other applicable laws; and an award of costs.

5 **ELEVENTH CAUSE OF ACTION**

6 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

7 **Unfair Business Practices**

8 **(Against all Defendants)**

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

11 159. Defendants are "persons" as defined by California Business & Professions
12 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
13 and/or associations.

14 160. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
15 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
16 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
17 seeks to enforce important rights affecting the public interest within the meaning of Code of
18 Civil Procedure section 1021.5.

19 161. Defendants' activities, namely Defendants' company-wide practice and/or
20 policy of not paying Plaintiff and class members all meal and rest period premiums due to
21 them under Labor Code section 226.7, deprived Plaintiff and class members of the
22 compensation guarantee and enhanced enforcement implemented by section 226.7. The
23 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
24 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
25 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
26 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
27 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
28 unfair business practice in violation of California Business & Professions Code sections

17200, *et seq.* (*Id.*)

162. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

163. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

6. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

7. For all actual, consequential, and incidental losses and damages, according to proof;

8. For premiums pursuant to California Labor Code section 226.7(c);

9. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

10. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

11. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

12. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

13. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

14. For all actual, consequential, and incidental losses and damages, according to proof;

15. For premiums pursuant to California Labor Code section 226.7(c);

16. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

17. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

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1 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
2 itemized wage statements thereto;

3 31. For all actual, consequential, and incidental losses and damages, according to
4 proof;

5 32. For injunctive relief pursuant to California Labor Code section 226(h);

6 33. For statutory penalties pursuant to California Labor Code section 226(e);

7 34. For attorneys' fees and costs pursuant to California Labor Code section
8 226(e)(1); and

9 35. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Sixth Cause of Action**

12 36. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
14 meal and rest period premiums, and/or sick leave pay owed at the time of termination of the
15 employment of Plaintiff and other terminated class members;

16 37. For all actual, consequential and incidental losses and damages, according to
17 proof;

18 38. For waiting time penalties according to proof pursuant to California Labor
19 Code section 203 for all employees who have left Defendants' employ;

20 39. For pre-judgment interest on any unpaid wages from the date such amounts
21 were due, or as otherwise provided by law;

22 40. For attorneys' fees pursuant to California Code of Civil Procedure section
23 1021.5, or as otherwise provided by law; and

24 41. For such other and further relief as the Court may deem equitable and
25 appropriate.

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

27 42. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members

overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the

1 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
2 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by
3 failing to authorize and permit all rest periods); 226(a), 510 and 1198 (by failing to pay all
4 overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration
5 in the “regular rate” of pay for purposes of paying overtime wages and/or meal and rest period
6 premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages
7 for all hours worked); 1174(d), and 1198 (by failing to provide accurate wage statements and
8 maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages
9 upon termination); 204 (by failing to timely pay all earned wages during employment); 246
10 and 248.6 (by failing to properly calculate sick leave rates of pay and provide written notice of
11 paid sick leave available); 1198 and the applicable IWC Wage Order (by failing to provide
12 suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to
13 provide notice of material terms of employment);

14 55. For civil penalties pursuant to the California Labor Code, including sections
15 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor
16 Code sections 201, 202, 204, 246, 248.6, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
17 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

18 56. For attorneys’ fees and costs pursuant to California Labor Code section
19 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California
20 Labor Code sections 201, 202, 204, 246, 248.6, 226(a), 226.7, 510, 512(a), 516, 1174(d),
21 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

22 57. For pre-judgment and post-judgment interest as provided by law; and

23 58. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Tenth Cause of Action**

26 59. That the Court declare, adjudge and decree that Defendants’ conduct of failing
27 to provide Plaintiff and class members all meal periods, failing to authorize and permit
28 Plaintiff and class members to take all rest periods, failing to include all forms of

1 remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal
2 and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class
3 members all overtime wages due to them, failing to provide Plaintiff and class members all
4 minimum wages due to them, failing to provide Plaintiff and class members accurate and
5 complete wage statements, failing to maintain accurate payroll records for Plaintiff and class
6 members, failing to timely pay Plaintiff and class members all earned wages during
7 employment, failing to properly calculate Plaintiff's and class members' sick leave rates of
8 pay and provide written notice of paid sick leave, failing to reimburse Plaintiff and class
9 members for business-related expenses, and failing to provide written notice of material terms
10 of employment, constitutes an unlawful business practice in violation of California Business
11 and Professions Code sections 17200, *et seq.*;

12 60. For restitution of unpaid wages to Plaintiff and all class members and
13 prejudgment interest from the day such amounts were due and payable;

14 61. For the appointment of a receiver to receive, manage, and distribute any and all
15 funds disgorged from Defendants and determined to have been wrongfully acquired by
16 Defendants as a result of violations of California Business & Professions Code sections
17 17200, *et seq.*;

18 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
19 California Code of Civil Procedure section 1021.5; and

20 63. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Eleventh Cause of Action**

23 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
24 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
25 an unfair business practice in violation of California Business and Professions Code sections
26 17200, *et seq.*;

27 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
28 from Plaintiff and class members and prejudgment interest from the day such amounts were

1 due and payable;

2 66. For the appointment of a receiver to receive, manage, and distribute any and all
3 funds disgorged from Defendants and determined to have been wrongfully acquired by
4 Defendants as a result of violations of California Business & Professions Code sections
5 17200, *et seq.*;

6 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
7 California Code of Civil Procedure section 1021.5;

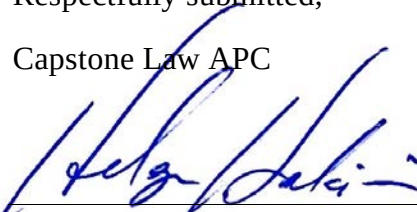
8 68. For pre-judgment and post-judgment interest as provided by law; and

9 69. For such other and further relief as the Court may deem equitable and
10 appropriate.
11

12 Dated: August 17, 2023

Respectfully submitted,

Capstone Law APC

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15 By: 

16 Orlando Villalba
17 Helga Hakimi
18 Joey Parsons

19 Attorneys for Plaintiff Juan Carlos Torres
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EXHIBIT “1”



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Los Angeles, California 90067
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ANTHONY CASTILLO
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June 12, 2023

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Juan Carlos Torres v. Hard Rock International (USA), Inc., et al.*

Dear PAGA Administrator:

This office represents Juan Carlos Torres in connection with his claims under the California Labor Code. Mr. Torres was an employee of HARD ROCK INTERNATIONAL (USA), INC.; HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC.; and/or HARD ROCK SACRAMENTO FM, LLC. For the purposes of this letter, Mr. Torres collectively refers to these entities as "HARD ROCK."

The employer may be contacted directly at the addresses below:

HARD ROCK INTERNATIONAL (USA), INC.
5701 STIRLING ROAD
ATTN LEGAL AFFAIRS
DAVIE, FL 33314

HARD ROCK CAFE INTERNATIONAL
(HOLLYWOOD), INC.
5701 STIRLING ROAD
ATTN LEGAL AFFAIRS
DAVIE, FL 33314

HARD ROCK SACRAMENTO FM, LLC
5701 STIRLING ROAD
ATTN LEGAL AFFAIRS
DAVIE, FL 3331

Mr. Torres intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Torres seeks relief on behalf of himself, the State of California, and other persons who are or were employed by HARD ROCK as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

HARD ROCK employed Mr. Torres as an hourly paid, non-exempt Food Server from approximately September 2021 to January 2023. During his employment, Mr. Torres typically worked nine (9) or more hours per day and five (5) or more days per week. At the time his employment ended, Mr. Torres was compensated approximately \$17.83 per hour. His primary job duties included, without limitation, taking customer orders, preparing food, and serving food to customers.

HARD ROCK committed one or more of the following Labor Code violations against Mr. Torres, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

HARD ROCK’s Company-Wide and Uniform Payroll and HR Practices

HARD ROCK INTERNATIONAL (USA), INC. and HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC. are a Florida corporation and Delaware corporation, respectively. HARD ROCK SACRAMENTO FM, LLC is a Florida limited liability company. Together, they own and operate a chain of rock and roll themed restaurants, with three (3) locations in California. Upon information and belief, HARD ROCK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Davie, Florida, for all non-exempt, hourly paid employees working for HARD ROCK in California, including Mr. Torres and other aggrieved employees. At all relevant times, HARD ROCK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Torres and other aggrieved employees, regardless of their location or position.

Upon information and belief, HARD ROCK maintains a centralized Payroll department at its corporate headquarters in Davie, Florida, which processes payroll for all non-exempt, hourly paid employees working for HARD ROCK in California, including Mr. Torres and other aggrieved employees. Further, HARD ROCK issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Torres and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, HARD ROCK utilized the same methods and formulas when calculating wages due to Mr. Torres and other aggrieved employees in California.

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period

¹ These facts, theories, and claims are based on Mr. Torres’s experience and counsel’s review of those records currently available relating to Mr. Torres’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Torres reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant period, on information and belief, HARD ROCK had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations while assigning heavy workloads, resulting in a failure to provide Mr. Torres and other aggrieved employees with adequate meal period coverage. Because HARD ROCK did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Torres and other aggrieved employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, HARD ROCK, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Torres and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Torres and other aggrieved employees have had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, approximately three (3) times per week, Mr. Torres was required to miss his meal periods altogether in order to meet the restaurant's customer demand. When he was able to take a meal period, Mr. Torres's meal periods were taken late twice per week, after having worked in excess of five (5) hours into his shift, in order to finish his assigned duties.

Also, HARD ROCK's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal period before 30 minutes elapsed.

Moreover, HARD ROCK did not provide Mr. Torres and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Torres worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Torres and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, HARD ROCK knew or should have known that, as a result of these policies, Mr. Torres and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. HARD ROCK further knew or should have known that it did not pay Mr. Torres and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, HARD ROCK engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice

and/or policy, Mr. Torres and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Further, to the extent that HARD ROCK did pay Mr. Torres and other aggrieved employees for missed, late, and interrupted meal periods, HARD ROCK did not pay Mr. Torres and other aggrieved employees at the correct rate of pay for premiums because HARD ROCK systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when Mr. Torres and other aggrieved employees received meal period premiums and these other forms of pay, HARD ROCK to pay full meal period premiums by paying a lower rate than required.

For example, HARD ROCK paid Mr. Torres and other aggrieved employees mandatory service charges which were listed on Mr. Torres's and other aggrieved employees' wage statements as "SERVICE CHG/". During pay periods that Mr. Torres and other aggrieved employees were paid meal period premiums, HARD ROCK did not incorporate the mandatory service charges into Mr. Torres's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for meal period premiums. Specifically, HARD ROCK paid Mr. Torres and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, HARD ROCK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, HARD ROCK regularly failed to authorize and permit Mr. Torres and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, HARD ROCK's company-wide practices of

understaffing while assigning heavy workloads prevented Mr. Torres and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, HARD ROCK failed to schedule rest periods, which, coupled with HARD ROCK's failure to provide adequate rest period coverage, further led to Mr. Torres and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, HARD ROCK maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Torres and other aggrieved employees remain on the premises during their rest periods. Because Mr. Torres and other aggrieved employees were restricted from leaving HARD ROCK's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, HARD ROCK effectively maintained control over Mr. Torres and other aggrieved employees during rest periods.

As a result of HARD ROCK's practices and policies, Mr. Torres and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Torres had to forego some of his rest periods because the restaurant was busy, and he did not have sufficient rest period coverage.

HARD ROCK has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Torres and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that HARD ROCK did pay Mr. Torres and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, HARD ROCK did not pay Mr. Torres and other aggrieved employees at the correct rate of pay for premiums because HARD ROCK failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, HARD ROCK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

HARD ROCK willfully failed to pay all overtime wages owed to Mr. Torres and other aggrieved employees. During the relevant time period, Mr. Torres and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

HARD ROCK had, and continues to have, a company-wide policy and/or practice of requiring Mr. Torres and other aggrieved employees to perform tasks off-the-clock outside of their shifts or on their days off, such as watching training videos. For example, HARD ROCK required Mr. Torres to complete an online training module on HARD ROCK's company culture and values, and an online training module on HARD ROCK's guest loyalty rewards program, while he was at home, but was not compensated for this time.

Moreover, as stated above, HARD ROCK had, and continues to have, a company-wide policy and/or practice of understaffing its restaurants, which, combined with the assignment of heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage for Mr. Torres and/or other aggrieved employees. Consequently, other aggrieved employees worked through meal periods and/or had meal periods interrupted in order to attend to their work duties. HARD ROCK did not compensate other aggrieved employees for the time they spent working off the clock during meal periods. Also, as stated, HARD ROCK's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system prevented employees from clocking back in from a meal period until 30 minutes elapsed. Thus, HARD ROCK's timekeeping system prevented other aggrieved employees from recording all hours worked when meal periods were missed, short, and/or interrupted.

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

Furthermore, HARD ROCK did not pay Mr. Torres and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. As set forth above, in addition to an hourly wage, HARD ROCK paid Mr. Torres and other aggrieved employees incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration. However, in violation of the California Labor Code, HARD ROCK failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Torres and other aggrieved employees worked overtime and received these other forms of pay, HARD ROCK failed to pay all overtime wages by paying a lower overtime rate than required. Specifically, HARD ROCK paid Mr. Torres and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. HARD ROCK's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Torres and other aggrieved employees on a company-wide basis.

HARD ROCK's failure to pay Mr. Torres and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Torres and other aggrieved employees are entitled to recover civil

penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

As set forth above, HARD ROCK had a company-wide policy and/or practice requiring Mr. Torres and other aggrieved employees to complete online training modules outside of their scheduled shifts or on their days off, but did not compensate them for this time.

Furthermore, as set forth above, on information and belief, due to HARD ROCK's uniform practices of understaffing, assigning heavy workloads, failing to schedule meal periods, and subsequent lack of meal period coverage, Mr. Torres and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. And, as described above, HARD ROCK's timekeeping system did not permit other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. Thus, HARD ROCK systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Accordingly, HARD ROCK regularly failed to pay at least minimum wages to Mr. Torres and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. HARD ROCK has not provided Mr. Torres and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a

subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, HARD ROCK has knowingly and intentionally provided Mr. Torres and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HARD ROCK issued uniform wage statements to Mr. Torres and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or sick leave pay, and the corresponding number of hours worked at each hourly rate. Specifically, HARD ROCK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, HARD ROCK issued wage statements to Mr. Torres and other aggrieved employees that failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and the corresponding number of hours worked at the overtime rate in violation of section 226(a)(9). For example, on 07/22/2022, HARD ROCK issued a wage statement to Mr. Torres that incorrectly indicates he earned \$260.47 for working 12.68 hours at an “OVERTIME” rate of \$33.5000, when the correct amount should be \$424.78 when calculated using that hourly rate. As another example, HARD ROCK issued a wage statement on 12/02/2022 to Mr. Torres that incorrectly indicates he earned \$122.50 for working 6.98 hours at an “OVERTIME” rate of \$33.9800, when the correct amount should be \$237.18 when calculated using that hourly rate. In addition to being unlawful, this practice makes it extremely difficult for employees to determine whether they are being paid correctly or not.

Second, because HARD ROCK did not record the time Mr. Torres and/or other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HARD ROCK did not list the correct amount of gross wages and net wages earned by Mr. Torres and/or other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HARD ROCK failed to accurately list the total number of hours worked by Mr. Torres and/or other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Third, because HARD ROCK did not calculate Mr. Torres’s and other aggrieved employees’ regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or sick leave pay, HARD ROCK did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, HARD ROCK failed to list the correct amount of net wages in violation of section 226(a)(5). HARD ROCK also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or sick leave pay, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), HARD ROCK willfully failed to maintain accurate payroll records for Mr. Torres and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, HARD ROCK engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Torres and other aggrieved employees, in violation of section 1198. Also, in light of HARD ROCK’s failure to provide Mr. Torres and other aggrieved employees with second 30-minute meal periods to which they were entitled, HARD ROCK kept no records of meal start and end times for second meal periods.

Because HARD ROCK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Torres and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Torres and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, HARD ROCK willfully failed to pay Mr. Torres and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or 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.

On information and belief, HARD ROCK has a company-wide practice and/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, HARD ROCK terminated Mr. Torres on or about January 16, 2023; however, HARD ROCK did not provide Mr. Torres with his final paycheck until on or about January 26, 2023. Thus, HARD ROCK failed to pay Mr. Torres his final wages immediately, in violation of California Labor Code sections 201.

Additionally, HARD ROCK willfully failed to pay Mr. Torres and other aggrieved employees who are no longer employed by HARD ROCK the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving HARD ROCK's employ.

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave and Provide Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Effective through December 31, 2022, Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days and that an “employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee’s itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee’s payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave.” Further, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) “[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision.”

During the relevant time period, HARD ROCK did not pay Mr. Torres and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, HARD ROCK paid Mr. Torres and other aggrieved employees incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration. However, in violation of the California Labor Code, HARD ROCK failed to incorporate all remunerations, including incentive pay, nondiscretionary bonuses, and/or mandatory service charges, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Torres and other aggrieved employees took sick leave and received these other forms of pay, HARD ROCK failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, HARD ROCK paid Mr. Torres and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, HARD ROCK failed, on a company-wide basis, to provide Mr. Torres and other aggrieved employees with written notice on all wage statements that listed the amount of COVID-19 supplemental paid sick leave used by them.

HARD ROCK’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Torres and other aggrieved employees on a company-wide basis in violation of California Labor Code sections 246(l) and/or 248.6(b)(3)(A). Moreover, HARD ROCK’s systematic failure to provide written notice of COVID-19 supplemental paid sick leave benefits to Mr. Torres and other aggrieved employees is in violation of Labor Code section 248.6(d).

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

HARD ROCK’s California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. HARD ROCK could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

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

HARD ROCK violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. HARD ROCK’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of HARD ROCK’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. HARD ROCK’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring HARD ROCK into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

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

HARD ROCK did not provide Mr. Torres and/or other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Torres and/or other aggrieved employees engaged in duties in which the nature of the work required standing, HARD ROCK denied them the use of seats nearby during lulls in their work duties. Moreover, HARD ROCK did not inform Mr. Torres and/or other aggrieved employees of their rights to a seat or stool under California law.

As a result of HARD ROCK's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Torres and/or other aggrieved employees were forced to stand during shifts and denied seats. HARD ROCK's failure to provide suitable seating to Mr. Torres and/or other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring HARD ROCK into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, HARD ROCK had a company-wide policy of requiring Mr. Torres and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, to carry out their job duties, but HARD ROCK failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Torres and other aggrieved employees were required to use their personal mobile devices to communicate with management via phone calls and/or text messages regarding scheduling and to complete online training modules. Although HARD ROCK required Mr. Torres and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, HARD ROCK failed to reimburse them for these costs.

Second, during the relevant time period, HARD ROCK, on a company-wide basis, required Mr. Torres and other aggrieved employees to obtain and pay for certain certifications, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Torres complied with this requirement and spent money to obtain a food handler card and Alcohol Beverage Control Certificate, but HARD ROCK did not reimburse him for the costs of obtaining the certifications. Thus, HARD ROCK failed to reimburse Mr. Torres and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Third, during the relevant time period, HARD ROCK, on a company-wide basis, required Mr. Torres and other aggrieved employees to report to work in clean and presentable uniforms bearing the "Hard Rock" company logo and name, including uniform t-shirts and aprons. However, HARD ROCK failed to provide Mr. Torres and other aggrieved employees with an adequate number of uniform items in relation to the tasks they were required to perform, Mr. Torres and other aggrieved employees had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Mr. Torres's uniform t-shirts and aprons would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with his other laundry. As a result, he had to wash his uniform t-shirts and aprons separately from his regular clothing, and would spend money at the laundromat for the upkeep of his uniform. Thus, HARD ROCK failed to maintain the uniforms it

required Mr. Torres and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

HARD ROCK could have provided Mr. Torres and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, and an adequate number of uniforms or access to laundering services. Or, HARD ROCK could have reimbursed employees for the costs of their mobile device usage, certification fees, and laundering expenses or provided a uniform maintenance allowance. Instead, HARD ROCK passed these operating costs off onto Mr. Torres and other aggrieved employees. At all relevant times, Mr. Torres did not earn at least two (2) times the minimum wage.

Thus, HARD ROCK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, HARD ROCK failed, on a company-wide basis, to provide written notice to Mr. Torres and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). HARD ROCK's failure to provide Mr. Torres and other aggrieved employees with written notice of basic information regarding their employment with HARD ROCK is in violation of Labor Code section 2810.5.

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent

violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” HARD ROCK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Torres’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Torres seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Torres, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against HARD ROCK for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Torres seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: HARD ROCK INTERNATIONAL (USA), INC. (via U.S. Certified Mail); HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC. (via U.S. Certified Mail); HARD ROCK SACRAMENTO FM, LLC (via U.S. Certified Mail)

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 1875 Century Park, East, 1000
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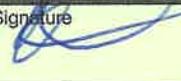
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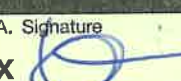
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SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece.		A. Signature X  ☐ Agent ☐ Addressee B. Received by (Printed Name) MAYORCA C. Date of Delivery 6-15-23 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
HARD ROCK INTERNATIONAL (USA), INC. ATTN: LEGAL AFFAIRS 5701 STIRLING ROAD DAVIE, FL 33314		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Mail ☐ Mail Restricted Delivery (0) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
2. Article Number (Transfer from service label) 7022 2410 0000 2405 8801			
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece,		A. Signature X  ☐ Agent ☐ Addressee B. Received by (Printed Name) MAYORCA C. Date of Delivery 6-15-23 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
HARD ROCK CAFE INTERNATIONAL (HOLLYWOOD), INC. ATTN: LEGAL AFFAIRS 5701 STIRLING ROAD DAVIE, FL 33314		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Mail ☐ Mail Restricted Delivery (0) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
2. Article Number (Transfer from service label) 7022 2410 0000 2405 8818			
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X  ☐ Agent ☐ Addressee B. Received by (Printed Name) MAYORCA C. Date of Delivery 6-15-23 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
HARD ROCK SACRAMENTO FM, LLC ATTN: LEGAL AFFAIRS 5701 STIRLING ROAD DAVIE, FL 33314		Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Mail ☐ Mail Restricted Delivery (500) ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
2. Article Number (Transfer from service label) 7022 2410 0000 2405 8795			
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **August 17, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Nancy Yaffe
nyaffe@foxrothschild.com
Steven P. Gallagher
stevengallagher@foxrothschild.com
FOX ROTHSCHILD LLP
10250 Constellation Boulevard, Suite 900
Los Angeles, CA 90067
Telephone: 310-598-4150
Facsimile: 310-556-9828

Attorneys for Defendats

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 17, 2023**, at Los Angeles, California.

Riley McIntire
Type/Print Name

Signature