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County of Santa Barbara
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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA BARBARA

11 JOSE MARTINEZ, as an aggrieved
12 employee pursuant to the Private
13 Attorneys General Act ("PAGA"), on
14 behalf of the State of California and
other non-party Aggrieved
Employees,

15 Plaintiff,

16 vs.

17 FIRESTONE WALKER, INC., a
18 California corporation; and DOES 1
through 10, inclusive,

19 Defendants.
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Case No.: 23CV03602

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

3 JURISDICTION AND VENUE

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

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

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

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in Buellton, County of Santa Barbara, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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

THE PARTIES

6. Plaintiff Jose Martinez is a resident of Lompoc, in Santa Barbara County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately July 2022 to January 2023. Plaintiff worked for Defendants as a Back of House (“BOH”) Lead and Line Cook at their taproom restaurant location in Buellton, California. Plaintiff typically worked eight (8) hours or more per day, and five (5) days per week. At the time Plaintiff’s employment with Defendants ended, he was compensated approximately \$21.00 per hour. Plaintiff’s job duties included, without limitation, fulfilling food orders, preparing food, re-stocking inventory, ordering and receiving food, and maintaining the kitchen’s cleanliness.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "Dispute Resolution Agreement" ("Arbitration Agreement") which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was one of several documents presented to employees for signature during the orientation process,

1 including Meal Break Waiver Form; Meal & Rest Break Policy; Paid Sick Leave Policy; Anti-
2 Harassment Policy; Nondisclosure or Use of Trade Secrets Policy; Employee Safety Policy;
3 Injury and Illness Prevention Program; and Taproom Rules & Regulations. Also, employees
4 did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement.
5 Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it
6 basis, along with other onboarding documents.

7 8. FIRESTONE WALKER, INC. was and is, upon information and belief, a
8 California corporation, and at all times hereinafter mentioned, an employer whose employees
9 are engaged throughout this county, the State of California.

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

14 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
15 were the partners, agents, owners, or managers of FIRESTONE WALKER, INC., at all
16 relevant times.

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

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

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

4 **PAGA REPRESENTATIVE ALLEGATIONS**

5 14. Defendants are a craft beer producer operating at least three (3) brewing
6 facilities in California each with its own taproom restaurant. Upon information and belief,
7 Defendants maintain a single, centralized Human Resources (HR) department at their
8 corporate headquarters in Buellton, California, for all non-exempt, hourly paid employees
9 working for Defendants in California, which is responsible for the recruiting and hiring of new
10 employees, and communicating and implementing Defendants' company-wide policies,
11 including timekeeping policies and meal and rest period policies, to employees throughout
12 California.

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

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

1 17. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

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

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

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

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

22 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive at least minimum wages for compensation and that they were not receiving at least
25 minimum wages for work that was required to be done off-the-clock. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
27 least minimum wages for work done off-the-clock.

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

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

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

16 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive complete and accurate wage statements in accordance with California law. In
19 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
20 were not provided complete and accurate wage statements.

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

25 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 timely payment of wages during their employment. In violation of the California Labor Code,
28 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,

1 including, but not limited to, overtime wages, minimum wages, meal and rest period
2 premiums, sick leave pay, and/or reporting time pay, within permissible time periods.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 timely payment of all wages earned upon termination of employment. In violation of the
6 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
7 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
8 meal and rest period premiums, vested vacation pay, sick leave pay, and/or reporting time pay,
9 within permissible time periods.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that they were required to pay departing employees all vested vacation
12 wages that were owed to them at the end of their employment. In violation of the California
13 Labor Code, Defendants failed to pay Plaintiff and other non-party Aggrieved Employees all
14 vested vacation wages at the end of their employment, causing a forfeiture of vested vacation
15 wages.

16 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income,
19 all income derived from incentive pay, nondiscretionary bonuses, mandatory service charges,
20 and/or other forms of compensation, but failed to include all forms of remuneration in
21 calculating the regular rate of pay for sick leave pay.

22 31. Plaintiff s informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they were not permitted to compel or coerce Plaintiff and other non-
24 party Aggrieved Employees to patronize their business in the purchase of anything of value,
25 but did, in fact, require Plaintiff and other non-party Aggrieved Employees to purchase
26 various items, including uniforms, from Defendants.

27 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 be paid reporting time pay when they reported to work for their usual or scheduled shift but
2 were put to work for less than half of the usual or scheduled shift. In violation of the
3 California Labor Code and applicable IWC Wage Order, Defendants did not pay Plaintiff and
4 other non-party Aggrieved Employees all reporting time pay due.

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

11 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 receive reimbursement for all business-related expenses and costs they incurred during the
14 course and scope of their employment and that they did not receive reimbursement of
15 applicable business-related expenses and costs incurred.

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

21 36. 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 other non-party Aggrieved Employees for all hours worked, and that Defendants
24 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
25 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
26 that they were properly denied wages, all in order to increase Defendants' profits.

27 37. At all times herein set forth, PAGA provides that any provision of law under
28 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be

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

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

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

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

- 14 (a) The aggrieved employee shall give written notice by online filing
15 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
16 to the employer of the specific provisions of the California Labor Code
17 alleged to have been violated, including the facts and theories to support
18 the alleged violations.
- 19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(a) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).
- 22 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
23 employer and the aggrieved employee by certified mail that it does not
24 intend to investigate the alleged violation within sixty (60) calendar
25 days of the postmark date of the Employee’s Notice. Upon receipt of
26 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
27 five (65) calendar days of the postmark date of the Employee’s Notice,
28 the aggrieved employee may commence a civil action pursuant to

California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

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

42. On June 12, 2023, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned

1 Plaintiff PAGA Case Number LWDA-CM-961400-23. A true and correct copy of Plaintiff's
2 written notice to the LWDA and Defendants dated June 12, 2023, is attached hereto as
3 "Exhibit 1."

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

7 44. 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, 227.3, 246, 248.6,
10 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

11 45. 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." Plaintiff, acting in the public interest
20 as a private attorney general, seeks assessment and collection of civil penalties under Labor
21 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
22 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
23 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
24 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
25 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
26 applicable IWC Wage Order.

27 46. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved

1 Employees' rights by violating various sections of the California Labor Code as set forth
2 above.

3 47. As set forth below, Defendants have violated numerous provisions of both the
4 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
5 Order.

6 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
7 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
8 private attorney general, seeks assessment and collection of civil penalties for himself, all
9 other non-party Aggrieved Employees, and the State of California against Defendants for
10 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6,
11 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

12 **FIRST CAUSE OF ACTION**

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

14 **(Against all Defendants)**

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

17 50. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
19 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
20 227.3, 450, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
21 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
22 those Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516,
23 1182.12, and 2810.5.

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

- 26 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
27 Wage Order for Defendants' failure to compensate Plaintiff and other
28 non-party Aggrieved Employees with all required overtime pay, as set

1 forth below;

2 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
3 applicable IWC Wage Order for Defendants' failure to include all forms
4 of remuneration in the regular rate of pay as required by law for
5 purposes of paying overtime wages and/or meal and rest period
6 premiums to Plaintiff and other non-party Aggrieved Employees, as set
7 forth below;

8 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
9 the applicable IWC Wage Order for Defendants' failure to compensate
10 Plaintiff and other non-party Aggrieved Employees with at least
11 minimum wages for all hours worked, as set forth below;

12 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
13 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
14 and other non-party Aggrieved Employees with meal periods, as set
15 forth below;

16 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to authorize and
18 permit Plaintiff and other non-party Aggrieved Employees to take rest
19 periods, as set forth below;

20 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
21 IWC Wage Order for failure to provide accurate and complete wage
22 statements to Plaintiff and other non-party Aggrieved Employees, as set
23 forth below;

24 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
25 IWC Wage Order for failure to maintain payroll records, as set forth
26 below;

27 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
28 during employment, as set forth below;

- (i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code section 227.3 for failure to pay Plaintiff and other non-party Aggrieved Employees all vested vacation time upon termination, as alleged herein;
- (k) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave rate paid to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (l) Violation of Labor Code section 450 for compelling Plaintiff and other non-party Aggrieved Employees to patronize Defendants' or any other person's business in the purchase of anything of value, as set forth below;
- (m) Violation of Labor Code sections section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their usual or scheduled shifts, as set forth below;
- (n) Violation of Labor Code section 1198 for failing to provide suitable seating to other non-party Aggrieved Employees, as set forth below;
- (o) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (p) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

52. Labor Code section 1198 makes it illegal to employ an employee under

1 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
2 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
3 shall be the . . . standard conditions of labor for employees. The employment of any employee
4 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

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

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

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

1 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
2 not recorded.

3 58. First, during the relevant time period, Defendants had, and continue to have, a
4 company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved
5 Employees from recording hours worked that were outside of their scheduled shifts in order to
6 limit the amount of overtime employees could accrue. This policy of limiting overtime,
7 coupled with Defendants' use of labor budgets and assignment of heavy workloads (*see infra*),
8 led Plaintiff and other non-party Aggrieved Employees to work off-the-clock before and after
9 their scheduled shift times. For example, before he clocked in for his shifts, Plaintiff
10 sometimes worked off-the-clock for up to 30 minutes preparing the kitchen for opening,
11 reviewing inventory, and assisting line cooks with preparing food items. As a further
12 example, after clocking out, Plaintiff was sometimes required to return to the restaurant
13 premises and complete certain closing tasks, which could take an additional five (5) minutes
14 off-the-clock. Thus, Defendants failed to track this time spent working before or after
15 scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no
16 compensation for this time.

17 59. Second, as stated, on information and belief, Defendants had, and continue to
18 have, a company-wide policy of strictly staffing their restaurant locations based on the labor
19 hours allocated by each location's labor or payroll budget set by corporate. This practice of
20 labor budgeting and/or limited payroll allocation, combined with the assignment of heavy
21 workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage,
22 because there were too few employees on duty to handle the workload. Moreover, Defendants
23 has a practice of failing to schedule meal periods, which further caused Plaintiff and other
24 non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods.
25 As a result of this inadequate meal period coverage, Plaintiff and other non-party Aggrieved
26 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
27 they were entitled to receive a meal period. For example, Plaintiff worked through his meal
28 periods approximately three (3) times per week in order to keep up with customer demand,

1 which often included fulfilling food orders for large private banquet events, in addition to the
2 restaurant's regular foot traffic. Consequently, Plaintiff and other non-party Aggrieved
3 Employees performed work during meal periods for which they were not paid.

4 60. Further, because Defendants frowned upon employees accruing meal period
5 penalties, Defendants' management pressured employees to clock out for meal periods and/or
6 adjusted employee time records to reflect compliant meal periods, regardless of whether they
7 had received a compliant meal period or not, in order to strictly limit meal penalties that
8 would need to be paid by Defendants. In addition, Defendants' company-wide timekeeping
9 system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours
10 worked when their meal periods were shortened or interrupted, because the system locked out
11 Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period,
12 and would not permit them to clock back in from a meal period until 30 minutes had elapsed.
13 Thus, Defendants' timekeeping system further prevented Plaintiff and other non-party
14 Aggrieved Employees from recording all hours worked when their meal periods were
15 shortened or interrupted.

16 61. Defendants knew or should have known that, as a result of these company-wide
17 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
18 their assigned duties off-the-clock before and after their shifts and during meal periods, and
19 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
20 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or
21 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
22 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
23 overtime wages for all of the overtime hours they actually worked.

24 62. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
25 Employees the correct overtime rate for the recorded overtime hours that they generated. In
26 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
27 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
28 However, in violation of the California Labor Code, Defendants failed to incorporate all

1 compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges,
2 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes
3 of calculating the overtime wage rate. Therefore, during times when Plaintiff and other non-
4 party Aggrieved Employees worked overtime and received these other forms of pay,
5 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

6 63. For example, Defendants paid Plaintiff and other non-party Aggrieved
7 Employees nondiscretionary bonuses and mandatory service charges. On information and
8 belief, these nondiscretionary bonuses and mandatory service charges were listed on
9 Plaintiff's and other non-party Aggrieved Employees' wage statements as "Bonus" and
10 "Service Charge." During pay periods that Plaintiff and other non-party Aggrieved
11 Employees were paid overtime wages, Defendants did not incorporate the bonus pay and
12 mandatory service charges into Plaintiff's and other non-party Aggrieved Employees' regular
13 rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours
14 worked. Specifically, Defendants paid Plaintiff and other non-party Aggrieved Employees 1.5
15 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants'
16 failure to properly calculate the overtime rates of pay based on all remuneration paid has
17 resulted in an underpayment of overtime wages to Plaintiff and other non-party Aggrieved
18 Employees on a company-wide basis.

19 64. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 the balance of overtime compensation as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

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

26 65. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
28 to be paid to employees, and the payment of a wage less than the minimum so fixed is

1 unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time
2 during which an employee is subject to the control of an employer, and includes all the time
3 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code
4 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

5 66. First, as stated above, as a result of Defendants’ policy of limiting the amount of
6 overtime employees could accrue, Defendants required Plaintiff and other non-party Aggrieved
7 Employees to perform work off-the-clock before and after their scheduled shifts to complete
8 their tasks, such as preparing the restaurant for opening, reviewing inventory, assisting line
9 cooks in preparing food, or completing closing tasks. However, Defendants failed to track this
10 time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, and thus,
11 Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

12 67. Second, as stated above, due to Defendants’ company-wide practices of utilizing
13 labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods,
14 and subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved
15 Employees were impeded from taking all uninterrupted meal periods to which they were entitled
16 and were required to work during their meal periods, time for which they were not paid.

17 68. Moreover, as stated, in order to prevent employees from accruing meal period
18 penalties, upon information and belief, Defendants’ management pressured employees to clock
19 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
20 but required them to continue working, time for which they were not paid. Moreover, as stated,
21 Defendants’ timekeeping system prevented Plaintiff and other non-party Aggrieved Employees
22 from entering time worked during meal periods because the system locked out Plaintiff and
23 other non-party Aggrieved Employees for a full 30 minutes. Thus, Defendants systematically
24 failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during
25 unpaid meal periods because these hours were not always correctly recorded.

26 69. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
27 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
28 not qualify for overtime premium payment, Defendants did not pay at least minimum wages

1 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
2 1194, 1197, and 1198.

3 70. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
5 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
6 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

12 72. At all relevant times herein set forth, California Labor Code section 512(a)
13 provides that an employer may not require, cause, or permit an employee to work for a period
14 of more than five (5) hours per day without providing the employee with a meal period of not
15 less than thirty (30) minutes, except that if the total work period per day of the employee is
16 not more than six (6) hours, the meal period may be waived by mutual consent of both the
17 employer and the employee. Under California law, first meal periods must start after no more
18 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

19 73. At all relevant times herein set forth, California Labor Code sections 226.7,
20 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
21 meal period mandated by an applicable order of the IWC.

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

1 75. First, during the relevant time period, as stated, Defendants had, and continue
2 to have, a company-wide policy and/or practice of understaffing their locations due to labor
3 budgeting and/or limited payroll allocation, which, combined with the assignment of heavy
4 workloads, and failure to schedule meal periods, has resulted in a lack of meal period
5 coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all
6 timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff and other
7 non-party Aggrieved Employees had to work through all or part of their meal periods, had
8 their meal periods interrupted, and/or wait extended periods of time before taking meal
9 periods to which they were entitled. For example, as stated, approximately three (3) times per
10 week, Plaintiff missed his meal periods entirely. On days when Plaintiff was able to take his
11 meal periods, he took them late, approximately after the seventh hour of work, and often had
12 his meal periods interrupted and/or cut short in order to assist the BOH crew members.

13 76. Furthermore, as stated, Defendants had, and continue to have, a company-wide
14 policy and/or practice of understaffing their locations and assigning heavy workloads,
15 discouraging employees from incurring overtime, and failing to schedule meal periods, which
16 resulted in a lack of meal period coverage and prevented Plaintiff and other non-party
17 Aggrieved Employees from taking all timely meal periods to which they were entitled. As a
18 result, Plaintiff and other non-party Aggrieved Employees were forced to work in excess of
19 five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to
20 forgo their meal periods altogether.

21 77. Second, as stated, Defendants' company-wide timekeeping system prevented
22 Plaintiff and other non-party Aggrieved Employees from recording when their meal periods
23 were shortened or interrupted, because the system locked out Plaintiff and other non-party
24 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
25 clock back in from a meal period before 30 minutes had elapsed. For example, Plaintiff had
26 his meal periods interrupted or cut short to go back to assisting BOH crew members, in order
27 to keep up with customer demand and handle the heavy workload, but was unable to record
28 that his meal period was shortened.

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

7 79. Moreover, Defendants had a company-wide policy of requiring all newly hired
8 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
9 the position that non-exempt, hourly paid employees had waived their rights to first and/or
10 second meal periods for the entirety of their employment and, on that basis, did not provide
11 them with all meal periods to which they were entitled. Furthermore, Defendants' "Meal
12 Break Waiver Form" requires employees to provide written notice should they wish to revoke
13 the waiver. Defendants' presumption that meal periods would not be provided for shifts in
14 excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but
15 less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of
16 hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded
17 Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they
18 were entitled.

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

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

26 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
27 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
28 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them

1 invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-
2 party Aggrieved Employees with meal periods did not arise until they had employed them for a
3 full five (5) hours.

4 81. Defendants knew or should have known that as a result of their company-wide
5 policies and/or practices, Plaintiff and other non-party Aggrieved Employees were prevented
6 from being relieved of all duties and required to perform some of their assigned duties during
7 meal periods. Defendants further knew or should have known that they did not pay Plaintiff
8 and other non-party Aggrieved Employees meal period premiums when meal periods were
9 late, interrupted, shortened, and/or missed.

10 82. Furthermore, Defendants engaged in a company-wide practice and/or policy of
11 not paying all meal period premiums owed when compliant meal periods are not provided.
12 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
13 have not received premium pay for all missed, late, and interrupted meal periods.
14 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
15 Employees for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and
16 other non-party Aggrieved Employees at the correct rate of pay for premiums because
17 Defendants systematically failed to include all forms of compensation, such as incentive pay,
18 nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in
19 the regular rate of pay. Therefore, during times when Plaintiff and other non-party Aggrieved
20 Employees received meal period premiums and these other forms of pay, Defendants failed to
21 pay full meal period premiums by paying a lower rate than required. Specifically, Defendants
22 paid Plaintiff and other non-party Aggrieved Employees meal period premiums at their
23 straight hourly rate of pay instead of at their regular rate of pay.

24 83. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
26 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 558 and/or 2699(a), (f), and (g).

28 //

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

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

85. At all relevant times, 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.

86. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

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

88. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party 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, Defendants' company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and

1 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
2 in order to take compliant rest periods. Defendants also failed to schedule rest periods, which,
3 coupled with Defendants' failure to provide adequate rest period coverage, further led to
4 Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take
5 rest periods.

6 89. As a result of Defendants' practices and policies, Plaintiff and other non-party
7 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
8 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
9 were entitled. For example, throughout his employment, Plaintiff had to forego nearly all of
10 his rest periods because the restaurant was busy and did not have coverage.

11 90. Furthermore, upon information and belief, Defendants maintained a company-
12 wide on-premises rest period policy, which mandated that Plaintiff and other non-party
13 Aggrieved Employees remain on Defendants' premises during their rest periods. Because
14 Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises
15 during rest periods, they were denied the ability to use their rest periods freely for their own
16 purposes, such as running personal errands. Thus, Defendants effectively maintained control
17 over Plaintiff and other non-party Aggrieved Employees during rest periods.

18 91. Defendants have also engaged in a systematic, company-wide practice and/or
19 policy of not paying rest period premiums owed when rest periods are not authorized and
20 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
21 Employees have not received premium pay for all missed rest periods. Alternatively, to the
22 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
23 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
24 other non-party Aggrieved Employees at the correct rate of pay for premiums because
25 Defendants failed to include all forms of compensation, such as incentive pay,
26 nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in
27 the regular rate of pay.

28 92. Defendants' conduct violates the applicable IWC Wage Order and California

1 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
2 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
3 558 and/or 2699(a), (f), and (g).

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

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

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

19 95. Because Defendants did not record the time Plaintiff and other non-party
20 Aggrieved Employees spent working off-the-clock and deducted time from their records for
21 meal periods that were interrupted and/or missed (and therefore time for which they should
22 have been paid), Defendants did not list the correct amount of gross wages and net wages
23 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
24 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
25 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
26 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
27 pay in effect during the pay period and the corresponding accurate number of hours worked at
28 each hourly rate, in violation of section 226(a)(9).

1 96. Furthermore, because Defendants did not calculate Plaintiff's and other non-
2 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
3 wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the
4 correct amount of gross wages in compliance with section 226(a)(1) and did not list the
5 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
6 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
7 of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation
8 of section 226(a)(9).

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

17 98. California Labor Code section 1174(d) provides that "[e]very person employing
18 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
19 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
20 plants or establishments at which employees are employed, payroll records showing the hours
21 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
22 applicable piece rate paid to, employees employed at the respective plants or
23 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
24 civil penalty if they fail to maintain accurate and complete records as required by section
25 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
26 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
27 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
28 result of failing to record the off-the-clock hours that they worked.

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

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

19 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

20 **VIOLATION OF LABOR CODE SECTION 204**

21 101. At all relevant times herein set forth, California Labor Code section 204
22 requires that all wages earned by any person in any employment between the 1st and the 15th
23 days, inclusive, of any calendar month, other than those wages due upon termination of an
24 employee, are due and payable between the 16th and the 26th day of the month during which
25 the labor was performed. Labor Code section 204 further provides that all wages earned by
26 any person in any employment between the 16th and the last day, inclusive, of any calendar
27 month, other than those wages due upon termination of an employee, are due and payable
28 between the 1st and the 10th day of the following month.

102. At all relevant times herein, 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, at all relevant times herein, 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.

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

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

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

107. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of

1 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
2 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
3 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
4 2699(a), (f), and (g).

5 **FAILURE TO PAY ALL VESTED VACATION TIME AND PAID TIME OFF UPON**
6 **TERMINATION**

7 **VIOLATION OF LABOR CODE SECTION 227.3**

8 108. At all relevant times herein, California Labor Code section 227.3 provides that
9 whenever a contract of employment or employer policy provides for paid vacations, and an
10 employee is terminated without having taken his or her vested vacation time, all vested
11 vacation shall be paid to him or her as wages at his or her final rate in accordance with such
12 contract of employment or employer policy respecting eligibility or time served. Vacation
13 time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share
14 of vested vacation pay. An employer may not require an employee to forfeit earned but
15 unused vacation pay.

16 109. Defendants had a company-wide policy and practice of failing to pay Plaintiff
17 and other non-party Aggrieved Employees vested vacation wages that were owed to them at
18 the end of their employment, including all vested vacation wages that accrued during
19 employees' final week(s) of employment, in violation of California Labor Code section 227.3.
20 Specifically, Plaintiff had earned vested vacation pay until his employment with Defendants
21 ended on or about January 19, 2023. However, Defendants willfully and improperly failed to
22 pay Plaintiff and other non-party Aggrieved Employees all of their unused and vested vacation
23 wages through their last pay period worked. Defendants' failure to pay Plaintiff and other
24 non-party Aggrieved Employees all vested vacation wages at the end of their employment has
25 caused a forfeiture of vested vacation wages in violation of California Labor Code section
26 227.3.

27 110. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
28 recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY
VIOLATION OF LABOR CODE SECTIONS 246 AND 248.6

111. 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. 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."

112. At all relevant times here, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Labor Code section 248.6(b)(3)(A) provides 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."

113. During the relevant time period, Defendants did not pay Plaintiff and other non-

1 party Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an
2 hourly wage, Defendants paid Plaintiff and other non-party Aggrieved Employees incentive
3 pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of
4 remuneration. However, in violation of the California Labor Code, Defendants failed to
5 incorporate all remunerations, including incentive pay, nondiscretionary bonuses, and/or
6 mandatory service charges into the calculation of the regular rate of pay for purposes of
7 calculating the sick leave rate. Therefore, during times when Plaintiff and other non-party
8 Aggrieved Employees took sick leave and received these other forms of pay, Defendants
9 failed to pay all sick leave benefits by paying a lower sick leave rate than required.
10 Specifically, Defendants paid Plaintiff and other non-party Aggrieved Employees sick leave
11 based on their hourly rate of pay instead of their regular rate of pay.

12 114. Defendants' failure to properly calculate the sick leave rates of pay based on all
13 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and other
14 non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code
15 sections 246(l) and 248.6(b)(3)(A).

16 115. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
17 recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

18 **COMPELLING PATRONIZATION**

19 **VIOLATION OF LABOR CODE SECTION 450**

20 116. At all relevant times herein, California Labor Code section 450 provides that an
21 employer may not "compel or coerce any employee, or applicant for employment, to patronize
22 his or her employer, or any other person, in the purchase of anything of value." An employer
23 violates section 450 by forcing an employee to patronize the employer's business in the
24 purchase of a company-provided good.

25 117. During the relevant time period, Defendants had a company-wide policy of not
26 providing a sufficient number of uniform items to Plaintiff and other non-party Aggrieved
27 Employees in relation to the shifts they were scheduled to work. In fact, Defendants' written
28 uniform policy for BOH crew members states, in part, that "[e]ach BOH employee must wear

1 [a] ... [c]lean Firestone Walker Black Shield Tee [and] Firestone hat” and that “[s]hirts will be
2 provided semi-annually (Three for cooks working 5 days, 2 for cooks working 1-4 days)” but
3 makes no mention of the provision of uniform hats.

4 118. During his employment, Plaintiff was scheduled to work five (5) or more days
5 per week, but Defendants provided him with only two (2) uniform shirts and one (1) uniform
6 hat, forcing him to purchase additional shirts and hats from Defendants in order to comply
7 with their uniform policy. Plaintiff estimates he spent approximately \$270 on 15 shirts and
8 \$150 on 10 hats. Thus, Defendants provided an insufficient quantity of uniform shirts and
9 hats to employees for the shifts they were required to work, forcing employees to purchase
10 additional uniform items.

11 119. Defendants conduct of compelling and/or coercing Plaintiff and other non-party
12 Aggrieved Employees to purchase goods, services, or anything of value, is in violation of
13 California Labor Code section 450. Plaintiff and other non-party Aggrieved Employees are
14 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f) and (g).

15 **FAILURE TO PAY REPORTING TIME PAY**

16 **VIOLATION OF LABOR CODE SECTION 1198**

17 120. California Labor Code section 1198 dictates that no employer may employ an
18 employee under conditions of labor that are prohibited by the applicable IWC wage order.
19 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
20 fixed by the commission shall be the . . . standard conditions of labor for employees. The
21 employment of any employee . . . under conditions of labor prohibited by the order is
22 unlawful.”

23 121. California Code of Regulations, Title 8, section 11050 section 5(A) provides
24 that “[e]ach workday an employee is required to report for work and does report, but is not put
25 to work or is furnished less than half said employee’s usual or scheduled day’s work, the
26 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
27 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
28 shall not be less than the minimum wage.” The “primary purpose of the reporting time

1 regulation” is “to guarantee at least partial compensation for employees who report to work
2 expecting to work a specified number of hours, and who are deprived of that amount because
3 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
4 *Cellular*, 209 Cal. App. 4th 556 (2012).

5 122. During the relevant time period, Defendants violated California Labor Code
6 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
7 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time
8 pay when they reported to work for their usual or scheduled shift but were put to work for less
9 than half of the usual or scheduled day’s work.

10 123. On information and belief, Defendants had a company-wide practice of sending
11 Plaintiff and other non-party Aggrieved Employees home early from their shifts, including
12 before they had worked at least half of their usual or scheduled shift, but would not pay
13 Plaintiff and other non-party Aggrieved Employees for half of their usual or scheduled shift.
14 For example, a few times throughout his employment, when scheduled to work an eight (8)
15 hour shift, Defendants’ managers sent Plaintiff home before he had an opportunity to work at
16 least half of his scheduled shift, but on information and belief, Plaintiff was only paid for the
17 time he had worked. Although Plaintiff and other non-party Aggrieved Employees would
18 report to work based on the schedule that Defendants provided to them, Defendants would
19 send them home before they had worked at least half of their scheduled shifts without giving
20 them reporting time pay.

21 124. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
22 properly compensated with reporting time pay in violation of California Labor Code section
23 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

24 125. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
25 penalties pursuant to Labor Code sections 2699(a), (f) and (g).

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FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(14)(A)

126. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable 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.”

127. 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.”

128. Defendants’ 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 non-party Aggrieved Employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could provide other non-party Aggrieved Employees with a seat or stool at their host stands, but instead denies employees seating and forces other non-party Aggrieved Employees to stand throughout the day.

129. Other non-party 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, Defendants systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other non-party Aggrieved Employees to stand throughout their work shifts.

130. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other non-party Aggrieved Employees were not allowed to sit, even when the nature of their work would reasonably permit the use

1 of seats, nor were they provided with suitable seats. Defendants' management did not inform
2 other non-party Aggrieved Employees that they were allowed to sit down, provide any means
3 for them to sit down, or mention any policy regarding sitting.

4 131. As a result of Defendants' company-wide policy and/or practice of prohibiting
5 employees from sitting during their shifts and company-wide failure to provide suitable
6 seating, other non-party Aggrieved Employees were forced to stand during shifts and denied
7 seats. Defendants' failure to provide suitable seating to other non-party Aggrieved Employees
8 violated and continues to violate California Labor Code section 1198 and IWC Wage Order
9 No. 5-2001, subdivision 14(A).

10 132. Other non-party Aggrieved Employees are therefore entitled to recover civil
11 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

12 **FAILURE TO PROVIDE SUITABLE SEATING**
13 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
14 **REGULATIONS, TITLE 8, SECTION 11050(14)(B)**

15 133. At all relevant times herein, California Labor Code section 1198 makes it
16 illegal to employ an employee under conditions of labor that are prohibited by the applicable
17 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
18 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
19 The employment of any employee . . . under conditions of labor prohibited by the order is
20 unlawful.”

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

26 135. During the relevant time period, Defendants violated California Labor Code
27 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
28 non-party Aggrieved Employees were not allowed to sit, even during lulls in their work

1 duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

2 136. Defendants' California restaurants are generally similar in their layout and
3 design and there was, and continues to be, space near other non-party Aggrieved Employees'
4 work areas (with reasonable or no modification to these work areas) to allow for the presence
5 and use of a seat or stool by other non-party Aggrieved Employees during lulls in operation.
6 Defendants could have provided other non-party Aggrieved Employees with a seat or stool at
7 their host stands, but instead denied, and continues to deny other non-party Aggrieved
8 Employees suitable seating altogether and effectively forced other non-party Aggrieved
9 Employees to stand throughout the day.

10 137. Defendants did not provide other non-party Aggrieved Employees with seats or
11 stools in reasonable proximity to their work areas to allow them to use seats when it would not
12 interfere with the performance of their duties for times when they were not engaged in active
13 duties that require standing. In other words, to the extent other non-party Aggrieved
14 Employees engaged in duties in which the nature of the work required standing, Defendants
15 denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants
16 did not inform other non-party Aggrieved Employees of their rights to a seat or stool under
17 California law.

18 138. As a result of Defendants' company-wide policy and/or practice of prohibiting
19 employees from sitting at any time, even when they were not engaged in active duties
20 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
21 work areas, other non-party Aggrieved Employees were forced to stand during shifts and
22 denied seats. Defendants' failure to provide suitable seating to other non-party Aggrieved
23 Employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001,
24 subdivision 14(B).

25 139. Other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

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

16 141. First, Defendants had a company-wide policy of requiring Plaintiff and other
17 non-party Aggrieved Employees to utilize their own personal vehicles to carry out company
18 business, but failed to reimburse them for all costs of travel, including mileage. For example,
19 Plaintiff was sometimes required to drive to a grocery store to obtain ingredients, such as
20 tortillas or avocados. Plaintiff estimates he drove two (2) miles roundtrip each time in order
21 to fulfill his work-related duties. Although Defendants required Plaintiff and other non-party
22 Aggrieved Employees to utilize their own vehicles to carry out their work-related
23 responsibilities, Defendants did not reimburse them for their travel expenses.

24 142. Second, during the relevant time period, Defendants had a company-wide
25 policy of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own
26 personal mobile devices, including cellular phones, and/or mobile data to carry out their job
27 duties, but Defendants failed to reimburse them for the costs of their work-related mobile
28 device expenses. For example, Plaintiff was required to use his personal cellular phone to

1 communicate with managers and BOH crew members and to order ingredients or products for
2 the kitchen. Although Defendants required Plaintiff and other non-party Aggrieved
3 Employees to utilize their personal mobile devices and/or mobile data to carry out their work-
4 related responsibilities, Defendants failed to reimburse them for this cost.

5 143. Third, during the relevant time period, Defendants, on a company-wide basis,
6 required Plaintiff and other non-party Aggrieved Employees to obtain and pay for certain
7 certifications, which were required for their continued employment, as well as associated costs
8 such as training and/or examination fees. For example, Plaintiff complied with this
9 requirement and spent approximately \$10 to obtain a food handler card, but Defendants did
10 not reimburse him for the costs of obtaining the certification. Thus, Defendants failed to
11 reimburse Plaintiff and other non-party Aggrieved Employees for the costs of obtaining these
12 certifications, including training and/or examination fees.

13 144. Fourth, during the relevant time period, Defendants, on a company-wide basis,
14 expected employees to report to work in clean and presentable uniforms bearing the company
15 logo, including a shirt and hat, but did not provide their employees with sufficient uniforms to
16 wear for their shifts throughout the week. Specifically, as stated, Defendants' written uniform
17 policy for BOH crew members states, in part, that "[e]ach BOH employee must wear [a] ...
18 [c]lean Firestone Walker Black Shield Tee [and] Firestone hat" and that "[s]hirts will be
19 provided semi-annually (Three for cooks working 5 days, 2 for cooks working 1-4 days)" but
20 makes no mention of the provision of uniform hats.

21 145. However, Defendants only provided Plaintiff with two (2) shirts and one (1) hat
22 at the time of hire. Because Defendants failed to provide their employees with an adequate
23 number of uniforms in relation to their scheduled shifts and for the tasks they were required to
24 perform, Plaintiff and other non-party Aggrieved Employees were forced to pay out-of-pocket
25 for some of their uniform items. For example, Plaintiff spent approximately \$420 out-of-
26 pocket to purchase 15 shirts and 10 hats from Defendants, but was not reimbursed for his
27 costs.

28 146. Moreover, because Defendants failed to provide Plaintiff and other non-party

1 Aggrieved Employees with an adequate number of uniform items, Plaintiff and other non-
2 party Aggrieved Employees had to wash their uniforms more frequently than they would
3 otherwise do laundry, and incur expenses in doing so. For example, due to the nature of
4 restaurant work, Plaintiff's uniform items would become stained with grease, sweaty, soiled,
5 and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other
6 laundry. As a result, Plaintiff had to wash his uniform items more frequently than other
7 clothing and/or separately from his regular clothing, thus incurring additional laundry
8 expenses for the upkeep of his uniforms. For example, Plaintiff spent approximately \$20 per
9 week at the laundromat for his uniform maintenance expenses. Thus, Defendants failed to
10 provide and maintain uniforms they required Plaintiff and other non-party Aggrieved
11 Employees to wear during their shifts and forced them to incur the costs of purchasing and
12 maintaining employee uniforms.

13 147. Defendants could have provided Plaintiff and other non-party Aggrieved
14 Employees with the actual equipment for use on the job, such as company vehicles and
15 company mobile devices, as well as an adequate number of uniform items or access to
16 laundering services. Or, Defendants could have reimbursed employees for their mileage;
17 travel expenses; mobile device usage; certification fees; and laundering expenses or provided
18 a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto
19 Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not
20 earn at least two (2) times the minimum wage.

21 148. Defendants company-wide policy and/or practice of not reimbursing employees
22 for expenses necessarily incurred and passing on their operating costs to Plaintiff and other
23 non-party Aggrieved Employees violates California Labor Code section 2802. Plaintiff and
24 other non-party Aggrieved Employees are entitled to recover civil penalties, attorney's fees,
25 costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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1 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
2 **EMPLOYMENT**

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

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

15 150. At all relevant times, on information and belief, Defendants failed, on a
16 company-wide basis, to provide written notice to Plaintiff and other non-party Aggrieved
17 Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-
18 (C). Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with
19 written notice of basic information regarding their employment with Defendants is in violation
20 of California Labor Code section 2810.5

21 151. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil
22 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a),
23 (f)-(g).

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

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

1 1. For civil penalties and attorneys’ fees in excess of twenty-five thousand dollars
2 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
3 amount.

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

5 2. That the Court declare, adjudge and decree that Defendants violated the
6 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
7 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
8 (by failing to include all forms of remuneration in the “regular rate” of pay for purposes of
9 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
10 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
11 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
12 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
13 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
14 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
15 termination); 227.3 (by failing to pay all vested vacation days upon termination); 246 and
16 248.6 (by failing to properly calculate sick leave pay); 450 (by compelling and/or coercing
17 employees to patronize employer’s business); 1198 and the applicable IWC Wage Order (by
18 failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and
19 2810.5 (by failing to provide written notice of information material to employment);

20 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
21 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
22 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 450, 510, 512(a), 516, 1174(d), 1182.12,
23 1194, 1197, 1198, 2802, and 2810.5;

24 4. For attorneys’ fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California
26 Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 450, 510, 512(a), 516,
27 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

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

1 6. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: August 17, 2023

Respectfully submitted,

Capstone Law APC

6 

7 By: _____

8 Robert Drexler

Molly DeSario

9 Jonathan Lee

10 Attorneys for Plaintiff Jose Martinez
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EXHIBIT “1”

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

June 12, 2023

VIA ONLINE SUBMISSION

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

Subject: *Jose Martinez v. Firestone Walker, Inc.*

Dear PAGA Administrator:

This office represents Jose Martinez in connection with his claims under the California Labor Code. Mr. Martinez was an employee of FIRESTONE WALKER, INC. ("FIRESTONE").

The employer may be contacted directly at the address below:

FIRESTONE WALKER, INC.
620 MCMURRAY ROAD
BUELLTON, CA 93427

Mr. Martinez 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. Martinez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by FIRESTONE 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.

FIRESTONE employed Mr. Martinez as an hourly paid, non-exempt employee from approximately July 2022 to January 2023. Mr. Martinez worked for FIRESTONE as a Back of House ("BOH") Lead and Line Cook at its taproom restaurant location in Buellton, California. During his employment, Mr. Martinez typically worked 8 (eight) or more hours per day and five (5) or more days per week. At the time his employment ended, Mr. Martinez was compensated approximately \$21.00 per hour. Mr. Martinez's job duties included, without limitation, fulfilling food orders, preparing food, re-stocking inventory, ordering and receiving food products, and maintaining the kitchen's cleanliness.

FIRESTONE committed one or more of the following Labor Code violations against Mr. Martinez, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor

Code section 2699(c):¹

FIRESTONE's Company-Wide and Uniform Payroll and HR Practices

FIRESTONE WALKER, INC. is a California corporation. FIRESTONE is a craft beer producer operating at least three (3) brewing facilities in California each with its own taproom restaurant. Upon information and belief, FIRESTONE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Buellton, California, for all non-exempt, hourly paid employees working for FIRESTONE in California, including Mr. Martinez and other aggrieved employees. At all relevant times, FIRESTONE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Martinez and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("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.

FIRESTONE willfully failed to pay all overtime wages owed to Mr. Martinez and other aggrieved employees. During the relevant time period, Mr. Martinez 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.

First, during the relevant time period, FIRESTONE had, and continues to have, a company-wide policy of discouraging and impeding Mr. Martinez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with FIRESTONE's use of labor budgets and

¹ These facts, theories, and claims are based on Mr. Martinez's experience and counsel's review of those records currently available relating to Mr. Martinez'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. Martinez 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.

assignment of heavy workloads (*see infra*), led Mr. Martinez and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, before he clocked in for his shifts, Mr. Martinez sometimes worked off-the-clock for up to 30 minutes preparing the kitchen for opening, reviewing inventory, and assisting line cooks with preparing food items. As a further example, after clocking out, Mr. Martinez was sometimes required to return to the restaurant premises and complete certain closing tasks, which could take an additional five (5) minutes off-the-clock. Thus, FIRESTONE failed to track this time spent working before or after scheduled shifts, and Mr. Martinez and other aggrieved employees received no compensation for this time.

Second, as stated, on information and belief, FIRESTONE had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. Moreover, FIRESTONE has a practice of failing to schedule meal periods, which further caused Mr. Martinez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Mr. Martinez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Martinez worked through his meal periods approximately three (3) times per week in order to keep up with customer demand, which often included fulfilling food orders for large private banquet events, in addition to the restaurant's regular foot traffic. Consequently, Mr. Martinez and other aggrieved employees performed work during meal periods for which they were not paid.

Further, because FIRESTONE frowned upon employees accruing meal period penalties, FIRESTONE's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by FIRESTONE. In addition, FIRESTONE's company-wide timekeeping system prevented Mr. Martinez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Martinez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, FIRESTONE's timekeeping system further prevented Mr. Martinez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

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

Furthermore, FIRESTONE did not pay Mr. Martinez and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, FIRESTONE paid Mr. Martinez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, FIRESTONE 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. Martinez and other aggrieved employees worked overtime and received these other forms of pay, FIRESTONE failed to pay all

overtime wages by paying a lower overtime rate than required.

For example, FIRESTONE paid Mr. Martinez and other aggrieved employees nondiscretionary bonuses and mandatory service charges. On information and belief, these nondiscretionary bonuses and mandatory service charges were listed on Mr. Martinez's and other aggrieved employees' wage statements as "Bonus" and "Service Charge." During pay periods that Mr. Martinez and other aggrieved employees were paid overtime wages, FIRESTONE did not incorporate the bonus pay and mandatory service charges into Mr. Martinez's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, FIRESTONE paid Mr. Martinez and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. FIRESTONE'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. Martinez and other aggrieved employees on a company-wide basis.

FIRESTONE's failure to pay Mr. Martinez 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. Martinez 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 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").

First, as stated above, as a result of FIRESTONE's policy of limiting the amount of overtime employees could accrue, FIRESTONE required Mr. Martinez and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts to complete their tasks, such as preparing the restaurant for opening, reviewing inventory, assisting line cooks in preparing food, or completing closing tasks. However, FIRESTONE failed to track this time Mr. Martinez and other aggrieved employees spent working off-the-clock, and thus, Mr. Martinez and other aggrieved employees received no compensation for this time.

Second, as stated above, due to FIRESTONE's company-wide practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Martinez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, FIRESTONE's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Moreover, as stated, FIRESTONE's timekeeping system prevented Mr. Martinez and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Martinez and other aggrieved employees for a full 30 minutes. Thus, FIRESTONE systematically failed to pay Mr. Martinez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, FIRESTONE did not pay at least minimum wages for all hours worked by Mr. Martinez and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, FIRESTONE 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, FIRESTONE regularly failed to pay at least minimum wages to Mr. Martinez 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. Martinez 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 §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable 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 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.

First, during the relevant time period, as stated, FIRESTONE had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Martinez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Martinez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or wait extended periods of time before taking meal periods to which they were entitled. For example, as stated, approximately three (3) times per week, Mr. Martinez missed his meal periods entirely. On days when Mr. Martinez was able to take his meal periods, he took them late, approximately after the seventh hour of work, and often had his meal periods interrupted and/or cut short in order to assist the BOH crew members.

Furthermore, as stated, because FIRESTONE frowned upon employees accruing meal period penalties, FIRESTONE's management pressured Mr. Martinez and other aggrieved employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by FIRESTONE. For example, Mr. Martinez was required to clock out for his meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

Second, as stated, FIRESTONE's company-wide timekeeping system prevented Mr. Martinez and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Martinez and 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 had elapsed. For example, Mr. Martinez had his meal periods interrupted or cut short to go back to assisting BOH crew members, in order to keep up with customer demand and handle the heavy workload, but was unable to record that his meal period was shortened.

Third, FIRESTONE did not provide Mr. Martinez 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. Martinez worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Martinez 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.

Moreover, FIRESTONE had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. FIRESTONE took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, FIRESTONE's "Meal Break Waiver Form" requires employees to provide written notice should they wish to revoke the waiver. FIRESTONE's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Martinez and other aggrieved employees from taking all meal periods to which they were entitled.

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

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

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That FIRESTONE requires Mr. Martinez and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because FIRESTONE's obligation to provide Mr. Martinez and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

FIRESTONE knew or should have known that as a result of its company-wide policies and/or practices, Mr. Martinez and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. FIRESTONE further knew or should have known that it did not pay Mr. Martinez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, FIRESTONE 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. Martinez and other aggrieved employees have not received premium pay for all missed, late, and

interrupted meal periods. Alternatively, to the extent that FIRESTONE did pay Mr. Martinez and other aggrieved employees for missed, late, and interrupted meal periods, FIRESTONE did not pay Mr. Martinez and other aggrieved employees at the correct rate of pay for premiums because FIRESTONE 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. Martinez and other aggrieved employees received meal period premiums and these other forms of pay, FIRESTONE failed to pay full meal period premiums by paying a lower rate than required. Specifically, FIRESTONE paid Mr. Martinez and other aggrieved employees meal period premiums at their straight hourly rate of pay instead of at their regular rate of pay.

Accordingly, FIRESTONE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Martinez 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, FIRESTONE regularly failed to authorize and permit Mr. Martinez 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, FIRESTONE's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Martinez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. FIRESTONE also failed to schedule rest periods, which, coupled with FIRESTONE's failure to provide adequate rest period coverage, further led to Mr. Martinez and other aggrieved employees not being authorized and permitted to take rest periods.

As a result of FIRESTONE's practices and policies, Mr. Martinez 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. Martinez had to forego nearly all of his rest periods because the restaurant was busy and did not have coverage.

Furthermore, upon information and belief, FIRESTONE maintained a company-wide on-premises rest period policy, which mandated that Mr. Martinez and other aggrieved employees remain on

FIRESTONE's premises during their rest periods. Because Mr. Martinez and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, FIRESTONE effectively maintained control over Mr. Martinez and other aggrieved employees during rest periods.

FIRESTONE also has 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. Martinez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that FIRESTONE did pay Mr. Martinez and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, FIRESTONE did not pay Mr. Martinez and other aggrieved employees at the correct rate of pay for premiums because FIRESTONE 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, FIRESTONE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Martinez 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(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. FIRESTONE has not provided Mr. Martinez 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, FIRESTONE has knowingly and intentionally provided Mr. Martinez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FIRESTONE issued uniform wage statements to Mr. Martinez 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 paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, FIRESTONE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because FIRESTONE did not record the time Mr. Martinez and 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), FIRESTONE did not list the correct amount of gross wages and net wages earned by Mr. Martinez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, FIRESTONE failed to accurately list the total number of hours worked by Mr. Martinez and 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).

In addition, because FIRESTONE did not calculate Mr. Martinez's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, FIRESTONE did not list the correct amount of gross wages earned by Mr. Martinez and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Martinez and other aggrieved employees in violation of section 226(a)(5). FIRESTONE 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 paid sick leave, 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 the hours they 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. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), FIRESTONE willfully failed to maintain accurate payroll records for Mr. Martinez 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, FIRESTONE engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Mr. Martinez and other aggrieved employees, in violation of section 1198. Furthermore, in light of FIRESTONE's failure to provide Mr. Martinez and other aggrieved employees with second 30-minute meal periods to which they were entitled, FIRESTONE kept no records of meal start and end times for second meal periods.

Because FIRESTONE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Martinez 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. Martinez 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. Martinez 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, FIRESTONE failed to pay Mr. Martinez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Martinez 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.

During the relevant time period, FIRESTONE willfully failed to pay Mr. Martinez and other aggrieved employees who are no longer employed by FIRESTONE all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, vested vacation pay, sick leave pay, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving FIRESTONE's employ.

Mr. Martinez 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 § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

FIRESTONE had a company-wide policy and practice of failing to pay Mr. Martinez and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, including all vested vacation wages that accrued during employees' final week of employment, in violation of California Labor Code section 227.3. Specifically, Mr. Martinez had earned vested vacation pay until his employment with FIRESTONE ended on or about January 19, 2023. However, FIRESTONE only paid Mr. Martinez the balance of his accrued and unused vacation wages as of January 7, 2023, or the end of his prior pay period. FIRESTONE willfully and improperly paid Mr. Martinez and other aggrieved employees their unused and vested vacation wages through their second to last pay period worked. FIRESTONE's failure to pay Mr. Martinez and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Mr. Martinez 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 §§ 246 and 248.6 – Failure to Properly Calculate 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. 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. California 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, FIRESTONE did not pay Mr. Martinez and other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, FIRESTONE paid Mr. Martinez 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, FIRESTONE 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 rate. Therefore, during times when Mr. Martinez and other aggrieved employees took sick leave and received these other forms of pay, FIRESTONE failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, FIRESTONE paid Mr. Martinez and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

FIRESTONE'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. Martinez and other aggrieved employees on a company-wide basis, in violation of Labor Code sections 246(l) and 248.6(b)(3)(A).

Mr. Martinez 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 § 450 – Compelling Patronization

Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

During the relevant time period, FIRESTONE had a company-wide policy of not providing a sufficient number of uniform items to Mr. Martinez and other aggrieved employees in relation to the shifts they were scheduled to work. In fact, FIRESTONE's written uniform policy for BOH crew members states, in part, that "[e]ach BOH employee must wear [a] ... [c]lean Firestone Walker Black Shield Tee [and] Firestone hat" and that "[s]hirts will be provided semi-annually (Three for cooks working 5 days, 2 for cooks working 1-4 days)" but makes no mention of the provision of uniform hats.

During his employment, Mr. Martinez was scheduled to work five (5) or more days per week, but FIRESTONE provided him with only two (2) uniform shirts and one (1) uniform hat, forcing him to purchase additional shirts and hats from FIRESTONE in order to comply with its uniform policy. Mr. Martinez estimates he spent approximately \$270 on 15 shirts and \$150 on 10 hats. Thus, FIRESTONE provided an insufficient quantity of uniform shirts and hats to employees for the shifts they were required to work, forcing employees to purchase additional uniform items.

FIRESTONE's conduct of compelling and/or coercing Mr. Martinez and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Mr. Martinez 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 § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further 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(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, FIRESTONE violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because FIRESTONE failed to pay Mr. Martinez and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, FIRESTONE had a company-wide practice of sending Mr. Martinez and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Martinez and other aggrieved employees for half of their usual or scheduled shift. For example, a few times throughout his employment, when scheduled to work an eight (8) hour shift, FIRESTONE's managers sent Mr. Martinez home before he had an opportunity to work at least half of his scheduled shift, but on information and belief, Mr. Martinez was only paid for the time he had worked. Although Mr. Martinez and other aggrieved employees would report to work based on the schedule that FIRESTONE provided to them, FIRESTONE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Mr. Martinez and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Mr. Martinez 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 § 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.*

FIRESTONE'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. FIRESTONE 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, FIRESTONE 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.

FIRESTONE 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 their work would reasonably permit the use of seats, nor were they provided with suitable seats. FIRESTONE'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 FIRESTONE'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. FIRESTONE'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 FIRESTONE 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.*

FIRESTONE's California restaurants are generally similar in their layout and design and there was, and continues to be, space near other aggrieved employees' work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. FIRESTONE could have provided 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.

FIRESTONE did not provide 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 other aggrieved employees engaged in duties in which the nature of the work required standing, FIRESTONE denied them the use of seats nearby during lulls in their work duties. Moreover, FIRESTONE did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of FIRESTONE'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, other aggrieved employees were forced to stand during shifts and denied seats. FIRESTONE's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring FIRESTONE 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, FIRESTONE had a company-wide policy of requiring Mr. Martinez and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Martinez was sometimes required to drive to a grocery store to obtain ingredients, such as tortillas or avocados. Mr. Martinez estimates he drove two (2) miles roundtrip each time in order to fulfill his work-related duties. Although FIRESTONE required Mr. Martinez and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, FIRESTONE did not reimburse them for their travel expenses.

Second, during the relevant time period, FIRESTONE had a company-wide policy of requiring Mr. Martinez and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but FIRESTONE failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Martinez was required to use his personal cellular phone to communicate with managers and BOH crew members and to order ingredients or products for the kitchen. Although FIRESTONE required Mr. Martinez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, FIRESTONE failed to reimburse them for this cost.

Third, during the relevant time period, FIRESTONE, on a company-wide basis, required Mr. Martinez

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. Martinez complied with this requirement and spent approximately \$10 to obtain a food handler card, but FIRESTONE did not reimburse him for the costs of obtaining the certification. Thus, FIRESTONE failed to reimburse Mr. Martinez and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Fourth, during the relevant time period, FIRESTONE, on a company-wide basis, expected employees to report to work in clean and presentable uniforms bearing the company logo, including a shirt and hat, but did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. Specifically, as stated, FIRESTONE's written uniform policy for BOH crew members states, in part, that "[e]ach BOH employee must wear [a] ... [c]lean Firestone Walker Black Shield Tee [and] Firestone hat" and that "[s]hirts will be provided semi-annually (Three for cooks working 5 days, 2 for cooks working 1-4 days)" but makes no mention of the provision of uniform hats.

However, FIRESTONE only provided Mr. Martinez with two (2) shirts and one (1) hat at the time of hire. Because FIRESTONE failed to provide their employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Martinez and other aggrieved employees were forced to pay out-of-pocket for some of their uniform items. For example, Mr. Martinez spent approximately \$420 out-of-pocket to purchase 15 shirts and 10 hats from FIRESTONE, but was not reimbursed for his costs.

Moreover, because FIRESTONE failed to provide Mr. Martinez and other aggrieved employees with an adequate number of uniform items, Mr. Martinez and other aggrieved employees had to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Mr. Martinez's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, Mr. Martinez had to wash his uniform items more frequently than other clothing and/or separately from his regular clothing, thus incurring additional laundry expenses for the upkeep of his uniforms. For example, Mr. Martinez spent approximately \$20 per week at the laundromat for his uniform maintenance expenses. Thus, FIRESTONE failed to provide and maintain uniforms they required Mr. Martinez and other aggrieved employees to wear during their shifts and forced them to incur the costs of purchasing and maintaining employee uniforms.

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

Thus, FIRESTONE 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. Martinez 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.

FIRESTONE failed to provide Mr. Martinez and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). FIRESTONE's failure to provide Mr. Martinez and other aggrieved employees with written notice of basic information regarding their employment with FIRESTONE is in violation of Labor Code section 2810.5.

Mr. Martinez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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." FIRESTONE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Martinez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Martinez 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. Martinez, 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 FIRESTONE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 450, 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. Martinez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Martinez's reasonable attempt to settle his dispute with FIRESTONE prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform FIRESTONE of Mr. Martinez's aforementioned grievances and the proposed remedies as detailed below, while affording FIRESTONE a reasonable opportunity to satisfy Mr. Martinez's demands.

Demand is hereby made that FIRESTONE shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. FIRESTONE shall pay Mr. Martinez and all other aggrieved employees employed by FIRESTONE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. FIRESTONE shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. FIRESTONE shall conduct a survey or interview all current and former aggrieved employees in California who worked for FIRESTONE in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses; mileage; mobile device expenses; certification fees; uniform purchase; uniform maintenance; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. FIRESTONE shall pay Mr. Martinez and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. FIRESTONE also shall pay Mr. Martinez and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. FIRESTONE shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and 248.6(b)(3)(A).
6. FIRESTONE shall reimburse Mr. Martinez and all aggrieved employees who were required to pay for any business expenses incurred for FIRESTONE's benefit, including, but not limited to, costs of travel expenses, mileage, mobile device usage, and/or uniform purchase and maintenance, as required by Labor Code section 2802.
7. FIRESTONE shall pay accrued legal interest to Mr. Martinez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
8. FIRESTONE shall provide Mr. Martinez and all aggrieved employees employed by FIRESTONE at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

9. FIRESTONE shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.
10. FIRESTONE shall reimburse Mr. Martinez and all aggrieved employees for their costs and expenses incurred as a result of FIRESTONE's conduct of compelling and/or coercing Mr. Martinez and other aggrieved employees to purchase goods, services, or anything of value, in violation of California Labor Code section 450.
11. FIRESTONE shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. FIRESTONE shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
13. FIRESTONE shall implement and provide suitable seating to all aggrieved employees.
14. FIRESTONE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
15. FIRESTONE shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: FIRESTONE WALKER, INC. (via U.S. Certified Mail)

FIRESTONE WALKER, INC.
620 MCMURRAY ROAD
BUELLTON, CA 93427

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