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Superior Court of California
County of Los Angeles
11/15/2024
David W. Slayton, Executive Officer / Clerk of Court
By: N. Osollo Deputy

Attorneys for Plaintiff JUAN GARCIA

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

JUAN GARCIA, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

C&R RESTAURANT GROUP, L.P., a
California Limited Partnership; and DOES 1
through 10, inclusive,

Defendants

Case No.: 23STCV19037

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiff JUAN GARCIA (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant C&R Restaurant Group, L.P. and
6 Does 1 through 10 (C&R RESTAURANT GROUP, L.P. and Does 1 through 10 are collectively
7 referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,
8 California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay all
9 wages due in violation of Labor Code Sections 204, 510, 1194, and 1197, including without
10 limitation, minimum, regular, and overtime wages; regular rate of pay, bonus compensation,
11 failure to provide meal periods or compensation in lieu thereof pursuant to Labor Code Sections
12 226.7 and 512, the applicable Industrial Welfare Commission Wage Orders, and Code of
13 Regulations, Title 8, Section 11000 *et seq.*; failure to provide rest periods or compensation in lieu
14 thereof pursuant to Labor Code Sections 226.7 and 512, the applicable Industrial Welfare
15 Commission Wage Orders, and Code of Regulations, Title 8, Section 11000 *et seq.*; failure to
16 keep accurate records, record keeping violations, and to provide accurate itemized wage
17 statements upon payment of wages pursuant to Labor Code Sections 226, subdivision (a), 1174,
18 and 1175; failure to reimburse for necessary expenditures pursuant to Labor Code Section 2802;
19 failure to pay wages of terminated or resigned employees pursuant to Labor Code Sections 201,
20 202, and 203; failure to pay all earned wages twice per month pursuant to Labor Code Section
21 204 (semimonthly payment violations); failure to provide suitable seating pursuant to Labor
22 Code Section 1198 and California Code of Regulations, Title 8, Section 11070 (14), and seating
23 violations; failure to pay all accrued vacation wages and paid time off pursuant to Labor Code
24 Section 227.3; failure to provide one day of rest in seven in violation of Labor Code Sections
25 551- 552; failure to provide sick leave and written notice of available paid sick leave in violation
26 of Labor Code Sections 245-248.5; failure to pay reporting time pay; failure to pay gratuities and
27 keep accurate records of gratuities in violation of Labor Code Sections 351-353; violations of
28 Labor Code Sections 432.5, 432.6, 432.7 for requiring conditions of employment prohibited by

1 law and unlawful inquiries into criminal history, unlawful agreements, and unlawful PAGA
2 waivers; statutory wage violations under Labor Code Section 223 and other applicable laws;
3 standard conditions of labor violations; unlawful deductions from wages in violation of Labor
4 Code Sections 221-222; failure to produce personnel records pursuant to Labor Code Sections
5 1198.5, 432; failure to make payment in violation of Labor Code Section 216 and failure to
6 provide suitable resting facilities pursuant to applicable Industrial Wage Order Section 13 and
7 other applicable laws; violations of Labor Code sections 226, 1198.5, and 432, including without
8 limitation pay and time period violations and personnel record violations; and final pay
9 violations.

10 2. For over 50 years, California’s courts and legislature have recognized that this
11 state’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
12 Wages are not ordinary debts. Because of the economic position of the average worker and his
13 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
14 that employees are promptly paid the minimum/overtime wages that the Legislature has required
15 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
16 criminalized certain types of violations. In extending extra protection to deter violations of these
17 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
18 other damages other than civil penalties—California has enacted the PAGA to permit an
19 individual to bring an action on behalf of himself and on behalf of others for PAGA penalties
20 only, which is the precise and sole nature of this action.

21 3. All California employees during the relevant statutes of limitations who are or
22 were harmed by Defendants’ illegal practices are “Aggrieved Employees.”

23 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
24 himself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
25 State of California. Plaintiff does not seek to recover anything other than penalties as permitted
26 by California Labor Code Section 2699 at this time. To the extent that statutory violations are
27 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
28 for those violations, but simply penalties as permitted by California Labor Code Section 2699,

1 declaratory relief, and injunctive relief for himself and all aggrieved employees as permitted by
2 the PAGA.

3 5. Defendants own/owned and operate/operated an industry, business, and
4 establishment within the State of California, including Los Angeles County. As such, and based
5 upon all the facts and circumstances incident to Defendants' business in California, Defendants
6 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
7 Commission ("IWC"), and the California Business & Professions Code.

8 6. Despite these requirements, throughout the statutory period Defendants
9 maintained systematic, company-wide policies and practices that include but are not limited to

- 10 (a) Failing to authorize and permit employees to take timely and duty-free rest
11 periods in compliance with the California Labor Code and IWC Wage
12 Orders, and failing to pay an additional hour's pay for each workday a rest
13 period violation occurred;
- 14 (b) Failing to maintain accurate records of the hours employees worked;
- 15 (c) Failing to pay employees all meal period, rest period, minimum wages,
16 straight time wages, and overtime wages due within the time period
17 specified by California law when employment terminates; and
- 18 (d) Failing to provide employees with accurate, itemized wage statements
19 containing all the information required by the California Labor Code and
20 IWC Wage Orders;
- 21 (e) Failing to provide suitable seats pursuant to IWC order and other seating
22 violations;
- 23 (f) Individual liability under Labor Code section 558.1;
- 24 (g) Recordkeeping requirement violations;
- 25 (h) Violations of Labor Code sections 226(b)-(c), 1198.5, and 432, including
26 without limitation time and pay record violations and personnel record
27 violations;
- 28 (i) Failure to provide suitable resting facilities;

- (j) Minimum wage violations;
- (k) Overtime wage violations;
- (l) Violation of California Labor Code sections 245-248.5;
- (m) Refusal to make payments of wages and other amounts;
- (n) Unlawful deductions;
- (o) Semimonthly payment violations;
- (p) Reporting time pay violations;
- (q) Violations of California Day of Rest Law;
- (r) Violations of Labor Code sections 351 and 353;
- (s) Labor Code violations relating to standard conditions and other violations;
- (t) Statutory Wage Violations;
- (u) Failure to Pay Vacation and Paid Time Off;
- (v) Final Pay Violations;
- (w) Business Expense Violations; and
- (x) The making of Unlawful Agreements and Unlawful Criminal History
Inquiries, and Unlawful PAGA Waivers,

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees, as well as those described and listed in the letter attached hereto as **Exhibit A** and included herein by this reference. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff JUAN GARCIA is a California resident that worked for Defendants in Los Angeles County, California at their 12105 West Pico Boulevard, Los Angeles, California 90064 location as a shift leader from May 2020 to May 2023.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant C&R RESTAURANT GROUP, L.P. is:

- (a) A California Limited Partnership with its corporate headquarters and principal place of business in Los Angeles, California.
- (b) A business entity conducting business in Los Angeles County; and,
- (c) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees' group. C&R RESTAURANT GROUP, L.P. suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

13. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other Aggrieved Employees, and exercised control over their wages, hours, and working

1 conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each
2 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
3 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
4 interest of some or all of the other Defendants, and was engaged with some or all of the other
5 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
6 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
7 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
8 within the scope of the relationships alleged above, that each Defendant knew or should have
9 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
10 conduct of all other Defendants.

11 14. Labor Code section 558.1 permits joint and several liability as to both an
12 individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802.
13 Defendant, at all relevant times, was an employer or person acting on behalf of employer(s) who
14 violated Plaintiff's and other non-exempt aggrieved employees and exempt aggrieved
15 employees' rights by violating various sections of the California Labor Code. The California
16 Legislature defines "other person acting on behalf of an employer" as "a natural person who is an
17 owner, director, officer, or managing agent of the employer." The "managing agent" definition
18 mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the
19 Civil Code). Under that statute and supporting case law, "managing agents" are all employees
20 who exercise substantial independent authority and judgment in their corporate decision-making
21 such that their decisions ultimately determine corporate policy. (*White v. Ultramar, Inc.* (1999)
22 21 Cal. 4th 563, 566-567.) For the reasons set forth above and others, at all relevant times, any
23 above-listed individuals meet the criteria of managing agents under California Law, and
24 therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations
25 of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

26 Plaintiff intends to further name any unknown individuals responsible for
27 violations arising under Labor Code sections 558 and 558.1 after further discovery. Plaintiff will
28 ask the Court to relate the amendment of the PAGA charge and the operative complaint to the

1 date of filing of these charges. Plaintiff asks and demands that Defendants put these individuals
2 on notice immediately to provide them as much notice possible to mount in defense. In the
3 alternative, Plaintiff also offers to Defendants to place those individuals on notice if Defendants
4 voluntarily provide their contact information.

5 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 15. Plaintiff JUAN GARCIA worked for Defendants in Los Angeles County,
7 California as a shift leader from May 2020 to May 2023. At all times Defendants classified
8 Plaintiff as non-exempt. During the statutory time period, Plaintiff was typically scheduled to
9 work 5 days in a workweek, and typically 10 to 12 hours in a single workday.

10 16. Throughout Plaintiff's employment, Defendants committed numerous labor code
11 violations under state law. As discussed below, and in the letter attached as **Exhibit A**
12 incorporated herein by this reference, Plaintiff's experience working for Defendants was typical
13 and illustrative.

14 17. Under California law, an employer must pay for all hours worked by an employee.
15 "Hours worked" is the time during which an employee is subject to the control of an employer
16 and includes all the time the employee is suffered or permitted to work, whether or not required
17 to do so.

18 18. In addition, Labor Code Section 510 provides that employees in California shall
19 not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek
20 unless they receive additional compensation beyond their regular wages in amounts specified by
21 law.

22 19. Labor Code Sections 1194 and 1198 also provide that employees in California
23 shall not be employed more than eight hours in any workday unless they receive additional
24 compensation beyond their regular wages in amounts specified by law. Additionally, Labor
25 Code § 1198 states that the employment of an employee for longer hours than those fixed by the
26 Industrial Welfare Commission is unlawful.

27 20. Throughout the statutory period, Defendants maintained a policy and practice of
28 failing to pay Plaintiff and the Aggrieved Employees for all hours worked including straight time

wages and overtime wages. Throughout the statutory period, Defendants maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work “off-the-clock”. Defendants required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled shifts in order to make sure they clock in to work on time considering the wait time for the cash register to be available for employees to clock in to work. Starting from approximately March-April 2020, Plaintiff and the Aggrieved Employees were required to undergo COVID pre-screening by checking their temperature and answering questions prior to clocking in to work. Defendants failed to compensate for that time. Throughout the statutory period, Defendants required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out for meal periods but continue working since Defendants were short-staffed and the Aggrieved Employees had to work through their meal periods to serve Defendants’ customers. Throughout statutory period, Plaintiff and the Aggrieved Employees were required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendants’ supervisors regarding their work schedules and work assignments. Plaintiff and the Aggrieved Employees were also required to wash and maintain their heavily soiled uniforms as well as participate in work meetings and perform other work tasks off-the-clock without compensation. In maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

21. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted,

1 duty-free meal period for every five hours of work, or without compensating Plaintiff and the
2 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
3 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
4 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
5 greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have
6 adequate written policies or practices providing meal periods for Plaintiffs and the Aggrieved
7 Employees, nor did Defendants have adequate policies or practices regarding the timing of meal
8 periods. Defendants required Plaintiff and the Aggrieved Employees to work through their meal
9 periods by requiring them to clock out for meal periods but continue working since Defendants
10 were short- staffed and the Aggrieved Employees had to work through their meal periods to serve
11 Defendants' customers. Plaintiff and the Aggrieved Employees would often times miss their
12 meal periods, have interrupted or short meal periods. Accordingly, Defendants' policy and
13 practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance
14 with California law.

15 22. Employers are required by California law to authorize and permit breaks of 10
16 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
17 two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the
18 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
19 itself a violation of California's rest break laws.

20 23. Defendants, however, wrongfully failed to authorize and permit Plaintiff and the
21 Aggrieved Employees to take timely and duty-free rest periods. Defendants regularly required
22 Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without
23 Defendants authorizing and permitting them to take a 10 minute, continuous and uninterrupted,
24 rest period for every four hours of work (or major fraction of four hours), or without
25 compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or
26 permitted. Defendants did not adequately inform Plaintiff and the Aggrieved Employees of their
27 right to take a rest period. Moreover, Defendants did not have adequate policies or practices
28 permitting or authorizing rest periods for Plaintiffs and the Aggrieved Employees, nor did

1 Defendants have adequate policies or practices regarding the timing of rest periods. Defendants
2 did not schedule rest periods every 4 hours or a major fraction. Defendants required Plaintiff and
3 the Aggrieved Employees to work through their rest periods since Defendants were short-staffed.
4 Plaintiffs and the Aggrieved Employees rest periods were often times interrupted or missed.
5 Accordingly, Defendants' policy and practice was for Plaintiff and the Aggrieved Employees to
6 work through rest periods and to not authorize or permit them to take any rest periods.

7 24. Labor Code section 1198 makes it illegal to employ an employee under conditions
8 of labor that are prohibited by the applicable wage order. California Labor Code section 1198
9 requires that "... the standard conditions of labor fixed by the commission shall be the ...
10 standard conditions of labor for employees. The employment of any employee ... under
11 conditions of labor prohibited by the order is unlawful. California Code of Regulations, Title 8,
12 section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable
13 seats when the nature of the work reasonably permits the use of seats."

14 25. California Code of Regulations, Title 8, section 11070(14)(B) provides that
15 "[w]hen employees are not engaged in the active duties of their employment and the nature of the
16 work requires standing, an adequate number of suitable seats shall be placed in reasonable
17 proximity to the work area and employees shall be permitted to use such seats when it does not
18 interfere with the performance of their duties."

19 26. Defendants violated California Labor Code section 1198 and California Code of
20 Regulations, Title 8, section 11070(14) because Plaintiff and The Aggrieved Employees were not
21 permitted to sit, even if they were not engaged in active duties. They were not permitted to sit,
22 even when it would not interfere with the performance of their duties, nor were they provided
23 with suitable seats.

24 27. Plaintiff alleges that Defendants' restaurant has an ample space near each cash
25 register and kitchen area, and/or other areas, to allow for the presence and use of a seat or stool
26 by Defendants' employees during the performance of their work duties. Defendants have not
27 provided employees, including Plaintiff and the Aggrieved Employees, with seats or stools at or
28 near their cash registers, kitchen or break areas when the performance of their duties did not

1 require moving or standing. Defendants knew or should have known that Plaintiff and the
2 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not
3 interfere with the performance of their duties, and also have seats nearby to use during a lull in
4 tasks that do require moving about or standing.

5 28. During the time period of employment for Plaintiff and the Aggrieved Employees,
6 Defendants' policy of not providing suitable and adequate seating for standing positions violated
7 California law pursuant to IWC Wage Order 5-2001, specifically Section 14, and was intentional
8 and willful. Defendants unlawfully violated the provision of Section 14 of the applicable IWC
9 Wage Order because the seating provision would not in any way interfere with the performance
10 of the respective duties of Plaintiff and the Aggrieved Employees.

11 29. California Labor Code § 2802 requires employers to reimburse employees for
12 their necessary expenditures and losses incurred in direct consequence of the discharge of their
13 duties or of their obedience to directions of the employer.

14 30. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
15 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
16 Defendants without reimbursement. Plaintiff and the Aggrieved Employees were required to
17 wash and maintain their heavily soiled uniforms and purchase a special detergent for the uniform
18 washing but were not compensated for that. Further, Plaintiff and the Aggrieved Employees
19 were required to use their personal cellular telephones for work purposes to communicate with
20 supervisors and coworkers regarding their work schedules and work assignments but were not
21 compensated for cell phone usage. Plaintiff and the Aggrieved Employees were also required to
22 use their personal vehicles to drive to the grocery stores to purchase groceries when Defendants
23 were out of stock but were not reimbursed for mileage. Plaintiff and the Aggrieved Employees
24 incurred these substantial expenses as a direct result of performing their job duties for
25 Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for
26 these employment-related expenses.

27 31. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
28 the wages earned and unpaid at the time of discharge are due and payable immediately, and that

1 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
2 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
3 two (72) hours previous notice of his or her intention to quit, in which case the employee is
4 entitled to his or her wages at the time of quitting.

5 32. Throughout the statutory period, the employment of Plaintiff and many other
6 Aggrieved Employees ended, i.e. were terminated by quitting or discharge, and the employment
7 of others will be. However, during the relevant time period, Defendants failed, and continues to
8 fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required
9 to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-
10 two (72) hours of their leaving Defendants' employ. These unpaid wages include wages for
11 unpaid work time, missed meal periods, and missed rest periods.

12 33. Defendants' conduct violates Labor Code Sections 201 and 202. Labor Code
13 Section 203 provides that if an employer willfully fails to pay wages owed, in accordance with
14 sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the
15 due date, and at the same rate until paid or until an action is commenced; but the wages shall not
16 continue for more than thirty (30) days.

17 34. Labor Code Section 204 requires employers to pay employees all earned wages
18 two times per month on days designated in advance by the employer as the regular paydays.
19 Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid
20 for between the 16th and the 26th day of the month during which the labor was performed, and
21 labor performed between the 16th and the last day, inclusive, of any calendar month, shall be
22 paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The
23 requirements of this section shall be deemed satisfied by the payment of wages for weekly,
24 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
25 following the close of the payroll period. Lab. Code Section 204(d).

26 35. Throughout the statutory period, employees were also entitled to be paid twice a
27 month at their regular rates, including all meal period premium wages owed, rest period premium
28 wages owed, and wages owed for hours worked. However, during all such times, Defendants

1 systematically failed and refused to pay the employees all wages due, and failed to pay those
2 wages twice a month, in that employees were not paid all wages for all meal periods not provided
3 by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all
4 wages for all hours worked. As a result, Defendants owe employees the legally required wages
5 for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those
6 amounts.

7 36. During the statutory period, Defendants failed to furnish Plaintiff and the
8 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
9 rates, and all gross and net wages earned (including wages for meal periods that were not
10 provided in accordance with California law, wages for rest periods that were not authorized and
11 permitted to take in accordance with California law, and correct wages earned for hours worked).
12 As a result of these violations of California Labor Code Section 226(a), the Plaintiff and the
13 Aggrieved Employees suffered injury because, among other things:

- 14 (a) the violations led them to believe that they were not entitled to be paid
15 overtime wages, meal period premium wages, and rest period premium
16 wages, even though they were entitled;
- 17 (b) the violations led them to believe that they had been paid the overtime,
18 meal period premium, and rest period premium wages to which they were
19 entitled, even though they had not been;
- 20 (c) the violations led them to believe they were not entitled to be paid
21 overtime, meal period premium, and rest period premium wages at the
22 correct California rate even though they were;
- 23 (d) the violations led them to believe they had been paid overtime, meal period
24 premium, and rest period premium wages at the correct California rate
25 even though they had not been;
- 26 (e) the violations hindered them from determining the amounts of overtime,
27 meal period premium, and rest period premium wages owed to them;

- 1 (f) in connection with their employment before and during this action, and in
2 connection with prosecuting this action, the violations caused them to have
3 to perform mathematical computations to determine the amounts of wages
4 owed to them, computations they would not have to make if the wage
5 statements contained the required accurate information;
- 6 (g) by understating the wages truly due them, the violations caused them to
7 lose entitlement and/or accrual of the full amount of Social Security,
8 disability, unemployment, and other governmental benefits;
- 9 (h) the wage statements inaccurately understated the wages, hours, and wages
10 rates to which Plaintiff and the Aggrieved Employees were entitled, and
11 Plaintiff and the Aggrieved Employees were paid less than the wages and
12 wage rates to which they were entitled.

13 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
14 Labor Code Section 226(e).

15 37. Plaintiff and the Aggrieved Employees were and are also subject to the alleged
16 improprieties, violations, actions, and/or omissions of Defendant as set forth in the letter attached
17 as **Exhibit A** and incorporated in full into this First Amended Complaint by this reference.

18 **FIRST CAUSE OF ACTION**

19 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
20 **2004, Cal. Lab. Code § 2698 et seq.)**

21 38. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
22 though fully set forth herein.

23 39. At all times herein mentioned, Defendants were subject to the Labor Code of the
24 State of California and the applicable Industrial Welfare Commission Orders.

25 40. California Labor Code Section 2699(a) specifically provides for a private right of
26 action to recover penalties for violations of the Labor Code: “Notwithstanding any other
27 provision of law, any provision of this code that provides for a civil penalty to be assessed and
28 collected by the Labor and Workforce Development Agency or any of its departments, divisions,

1 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
2 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
3 herself and other current or former employees pursuant to the procedures specified in Section
4 2699.3.”

5 41. Plaintiff has exhausted his administrative remedies pursuant to California Labor
6 Code § 2699.3. On June 5, 2023 and on October 23, 2024, he gave written notice and amended
7 notice (“Notice”) attached as **Exhibit A** by online filing to the Labor and Workforce
8 Development Agency and by certified mail to Defendants of the specific provisions of the Labor
9 Code that Defendants have violated against Plaintiff and current and former aggrieved
10 employees, including the facts and theories to support the violations. Plaintiff also paid the filing
11 fee on or about June 5, 2023. Plaintiff’s PAGA case number is LWDA-CM- 959669-23.

12 42. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
13 remedies with California’s Labor and Workforce Development Agency (LWDA) prior to suit,
14 which is required by the statute. *See* Cal. Lab. Code § 2699.3(d).

15 43. As of the date of this complaint filing the Labor and Workforce Development
16 Agency has not indicated that it intends to investigate Defendants’ Labor Code violations
17 discussed in the Notice. Accordingly, Plaintiff may commence a civil action to recover penalties
18 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
19 this Complaint. These penalties include, but are not limited to, penalties under California Labor
20 Code §§ 210, 218.5, 225.5, 226, 226.3, 226.6, 233, 234, 558, 558.1, 1174.5, 1197.1, 1198,
21 1198.5, 1199, 2802 and 2699(f)(2), as well as any penalties and/or code sections listed and
22 contained in the Notice attached as **Exhibit A** hereto and incorporated herein by this reference.

23 44. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
24 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
25 employing labor who willfully fails to maintain accurate and complete records required by
26 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
27 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
28 begins and ends each work period. Meal periods, and total hours worked daily shall also be

1 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
2 keep total hours worked in the payroll period and applicable rates of pay.

3 45. Based on the conduct described in this First Amended Complaint, Plaintiff is
4 entitled to an award of civil penalties on behalf of himself, the State of California, and similarly
5 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
6 an amount to be shown according to proof at trial. These penalties are in addition to all other
7 remedies permitted by law.

8 46. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
9 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
10 shall be entitled to an award of reasonable attorney's fees and costs."

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff and the Aggrieved Employees pray for judgment as follows:

13 1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee
14 as provided by law, including, but not limited to, those civil penalties provided by statute,
15 provided by PAGA;

16 2. For costs of suit and expenses incurred herein pursuant to Labor Code sections
17 2699, subdivision (g) and any other statutory basis or pursuant to the California Rules of Court

18 3. For reasonable attorneys' fees pursuant to Labor Code sections 2699, subdivision
19 (g), 2802, Code of Civil Procedure section 1021.5, and any other statutory basis, and;

20 4. For all such other and further relief as the Court may deem just and proper

21 Dated: November 15, 2024

Respectfully submitted,

23 **TUNYAN LAW, APC**

24 By: 

25 Lilit Tunyan
26 Artur Tunyan

27 Attorneys for Plaintiff JUAN GARCIA
28

Exhibit “A”



Lilit Tunyan, Esq.
1336 Rossmoyne Avenue,
Glendale, CA 91207
Tel: (323) 410-5050
ltunyan@tunyanlaw.com

June 5, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Agent for Service of Process for
C&R Restaurant Group, L.P.
Brian Cox
151 Kalmus Drive L5
Costa Mesa, CA 92626

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Juan Garcia v. C&R Restaurant Group, L.P.*

To Whom It May Concern:

Please be advised that my office has been retained by Juan Garcia (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer C&R Restaurant Group, L.P. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a shift leader from approximately May 2020 to May 2023 primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and between 10 to 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked including minimum wages, straight time wages and overtime wages. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and the Aggrieved Employees to perform work "off-the-clock". Defendant required Plaintiff and the Aggrieved Employees to arrive earlier than their scheduled shifts in order to make sure they clock in to work on time considering the wait time for the cash register to be available for employees to clock in to work. Starting from approximately March-April 2020, Plaintiff and the Aggrieved Employees were required to undergo COVID pre-screening by checking their temperature and answering questions prior to

clocking in to work. Defendant failed to compensate for that time. Throughout the statutory period, Defendant required Plaintiff and the Aggrieved Employees to work through their meal periods requiring them to clock out for meal periods but continue working since Defendant were short- staffed and the Aggrieved Employees had to work through their meal periods to serve Defendant's customers. Throughout statutory period, Plaintiff and the Aggrieved Employees were required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendant's supervisors regarding their work schedules and work assignments. Plaintiff and the Aggrieved Employees were also required to wash and maintain their heavily soiled uniforms off- the- clock without compensation. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees. Plaintiff and the Aggrieved Employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendant required Plaintiff and the Aggrieved Employees to work through their meal periods by requiring them to clock out for meal periods but continue working since Defendant was short-staffed and the Aggrieved Employees had to work through their meal periods to serve Defendant's customers. Often time Plaintiff's and the Aggrieved Employees' meal periods were interrupted, short or late. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit periods of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendants, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees. Defendant required Plaintiff and the Aggrieved Employees to work through their rest periods since Defendant was short-staffed. Plaintiffs and the Aggrieved Employees' rest breaks were often times short, late or interrupted. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. Plaintiff and the Aggrieved Employees were required to wash and maintain their heavily soiled uniforms and purchase a special detergent for the uniform washing but were not compensated for that. Further, Plaintiff and the Aggrieved Employees were required to use their personal cellular telephones for work purposes to communicate with supervisors and coworkers regarding their work schedules and work assignments but were not

compensated for cell phone usage. Plaintiff and the Aggrieved Employees were also required to use their personal vehicles to drive to the grocery stores to purchase groceries when Defendant was out of stock but were not reimbursed for mileage. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units

earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant failed to provide the employer entity correct address and names on the wage statements and wrongfully listed sick pay in the total number of hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the

26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when 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 areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and the Aggrieved Employees with suitable seats. Defendant failed to provide Plaintiff and the Aggrieved Employees with sits when their work allowed them to sit as well during meal and rest periods. Plaintiff and the Aggrieved Employees were required to eat their meals and spend their breaks standing when they had an opportunity to take those breaks.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;

2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code § 227.3 by failing to pay all vacation wages at termination;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements;
9. Labor Code § 204 by failing to pay all earned wages two times per month; and
10. Applicable IWC Section 14(A) for failure to provide suitable seating.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to their corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC



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October 23, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
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Oakland, CA 94612
PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested
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**AMENDED NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

Re: *Juan Garcia v. C&R Restaurant Group, L.P.*

To Whom It May Concern:

Please be advised that my office has been retained by Juan Garcia ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, et

seq.) against his former employer C&R Restaurant Group, L.P. (“Defendant”). The purpose of this amended letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “aggrieved employees”)

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff’s Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission (“IWC”).

Plaintiff worked for Defendant as a shift leader from approximately May 2020 to May 2023 primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and between 10 to 12 hours each workday.

Throughout Plaintiff’s employment, Defendant committed numerous labor code violations under state law. Among other things, Defendant (1) failed and continue to fail to keep accurate and complete time records for Plaintiff and non-exempt aggrieved employees; (2) failed and continue to fail to pay Plaintiff and non-exempt aggrieved employees for all hours worked; (3) failed and continue to fail to pay Plaintiff and non-exempt aggrieved employees at least minimum wage for all hours worked and overtime/regular rates for corresponding work; (4) failed and continue to fail to pay proper overtime wages to non-exempt aggrieved employees for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continue to fail to provide Plaintiff and non-exempt aggrieved employees with proper meal and/or rest breaks, and/or compensate Plaintiff and non-exempt aggrieved employees an additional hour of premium pay at the regular rate of compensation for missed/improper meal and/or rest periods; (6) refused and continue to refuse to make and/or falsely denied the amount of payments due to Plaintiff and non-exempt aggrieved employees, including but not limited to owed sick pay; (7) failed and continue to fail to place Plaintiff and non-exempt aggrieved employees on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continue to fail to provide legally compliant wage statements to Plaintiff and non-exempt aggrieved employees and exempt aggrieved employees; (9) made unlawful deductions from Plaintiff’s and other non-exempt aggrieved employees and exempt aggrieved employees’ paychecks; (10) failed and continue to fail to timely pay wages to Plaintiff and non-exempt aggrieved employees and exempt aggrieved employees during employment and/or upon separation of employment; (11) failed and

continue to fail to reimburse Plaintiff and non-exempt aggrieved employees and exempt aggrieved employees for business expenses incurred on behalf of Defendant; (12) conducted and continue to conduct illegal criminal and/or financial background checks as a condition of Plaintiff, non-exempt aggrieved employees' and exempt aggrieved employees' hire and continued employment; (13) required and continue to require Plaintiff and non-exempt aggrieved employees and exempt aggrieved employees to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer of employment and/or otherwise impermissibly inquired and continue to inquire into Plaintiff's, non-exempt aggrieved employees', and/or exempt aggrieved employees' criminal history on their employment applications and sign off on same as a condition of employment; (14) failed and continue to fail to provide suitable seating; and (15) required and continue to require Plaintiff, non-exempt aggrieved employees, and exempt aggrieved employees to agree in writing to a term or condition that violates the law as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Individual Liability Under Labor Code § 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. Defendant, at all relevant times, was an employer or person acting on behalf of employer(s) who violated Plaintiff's and other non-exempt aggrieved employees and exempt aggrieved employees' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "a natural person who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and 1194 as further described in detail below.

Plaintiff intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. Plaintiff will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Plaintiff asks and demands that Defendant put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, Plaintiff also offers to Defendant to place those individuals on notice if Defendant voluntarily provides their contact information.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and

includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code § 1197 provides the California requirement that employees must be paid at least the minimum wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Furthermore, "in any action under Labor Code §§ 98, 1193 .6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon ... " See California Labor Code § 1194.2.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and non-exempt aggrieved employees for all hours worked including minimum wages, straight time wages and overtime wages. Throughout the statutory period, Defendant regularly used a system of time rounding for shift start and shift end times and meal period start and end times in a manner that resulted, over a period of time, in failing to compensate Plaintiff and non-exempt aggrieved employees properly for all the time they have actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, Defendant frequently paid Plaintiff and non-exempt aggrieved employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. Throughout the statutory period, Plaintiff and non-exempt aggrieved employees received additional remuneration in the form of non-discretionary compensation including but not limited to bonuses and shift differentials. However, Defendant has not compensated Plaintiff and non-exempt aggrieved employees at the proper overtime and sick pay rate. Defendant did not include the additional remuneration paid to Plaintiff and non-exempt aggrieved employees in the regular rate of pay for purposes of calculating overtime rate of pay and sick pay. Throughout the statutory period, Defendant maintained a policy and practice of requiring Plaintiff and non-exempt aggrieved employees to perform work "off-the-clock". Defendant required Plaintiff and non-exempt aggrieved employees to arrive earlier than their scheduled shifts in order to make sure they clock in to work on time considering the wait time for the cash register to be available for employees to clock in to work, considering the time necessary for donning and doffing uniforms and/or

personal protective equipment, completing work tasks prior to the scheduled shifts and/or prior to clocking in or completing the work tasks after the scheduled shift and/or clocking out to work. Starting from approximately March-April 2020, Plaintiff and non-exempt aggrieved employees were required to undergo COVID pre-screening by checking their temperature and answering questions prior to clocking in to work. Defendant failed to compensate for that time. Throughout the statutory period, Defendant required Plaintiff and non-exempt aggrieved employees to work through their meal periods requiring them to clock out for meal periods but continue working since Defendant were short- staffed and non-exempt aggrieved employees had to work through their meal periods to serve Defendant's customers. Throughout statutory period, Plaintiff and non-exempt aggrieved employees were required to use their personal cellular telephones for work purposes at home after their scheduled work time to communicate with Defendant's supervisors regarding their work schedules and work assignments. Plaintiff and non-exempt aggrieved employees were also required to wash and maintain their heavily soiled uniforms as well as participate in work meetings and perform other work tasks off- the- clock without compensation. In maintaining a practice of not paying all wages owed, Defendant failed to maintain accurate records of the hours Plaintiff and non-exempt aggrieved employees worked.

Based on information and belief, defendant violated California's overtime laws by, among other things, failing to correctly calculate, or record, the total number of hours worked by Plaintiff and other non-exempt aggrieved employees and not paying proper overtime rates for overtime worked by virtue of same.

Namely, Defendant's automatic deduction and time rounding policies and practices for meal periods and shift start times and shift end times, payment according to scheduled hours worked rather than actual time worked, off-the clock/unpaid work completed during meal periods and/or time spent restricted to Defendant's premises and/or subject to Defendant's control during off-the-clock meal periods (described above), and/or other off-the-clock work resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to Plaintiff and non-exempt aggrieved employees who worked more than eight (8) hours in a day or more than forty (40) hours in a week.

Based on information and belief, Defendant failed and continue to fail to pay a premium wage rate for all hours worked beyond eight (8) hours in a day or beyond forty (40) hours in a week.

Based on information and belief, Defendant failed and continue to fail to pay twice non-exempt aggrieved employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California's overtime laws.

Based on information and belief, Defendant calculated the owed overtime rate(s) based on the California minimum wage rate as opposed to calculating the overtime rate(s) based on the minimum wage established for the cities and/or counties within which non-exempt aggrieved

employees worked, resulting in the miscalculation and underpayment of overtime wages owed to non-exempt aggrieved employees who worked in cities and/or counties in California with minimum wage rates above the California minimum wage rate.

Based on information and belief, Defendant failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to Plaintiff and other non-exempt aggrieved employees.

For example, based on information and belief, Plaintiff and other non-exempt aggrieved employees earned non-discretionary bonuses/incentive pay (e.g., non-discretionary production-based bonuses) and/or other non-discretionary compensation, however, Defendant failed to factor all non-discretionary compensation into the regular rate of pay used to calculate the owed overtime rate(s), resulting in the miscalculation of the owed overtime rate(s) of pay and the underpayment of overtime wages owed to plaintiff and other non-exempt aggrieved employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime. This conduct also results in violations of Labor Code sections 218.5, 510, 558.1, 1198-1199, and all applicable IWC Wage Orders, section 12(A). These violations subject Defendant to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each non-exempt aggrieved employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and non-exempt aggrieved employees with legally compliant meal periods. Defendant regularly required Plaintiff and non-exempt aggrieved employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and non-exempt aggrieved employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work.

Defendant did not adequately inform Plaintiff and non-exempt aggrieved employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and non-exempt aggrieved employees. Plaintiff and non-exempt aggrieved employees would often times miss their meal periods, have interrupted, late or short meal periods. Defendant required Plaintiff and non-exempt aggrieved employees to work through their meal periods by requiring them to clock out for meal periods but continue working since Defendant was short-staffed and non-exempt aggrieved employees had to work through their meal periods to serve Defendant's customers. Often time Plaintiff's and non-exempt aggrieved employees' meal periods were interrupted, short or late. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and non-exempt aggrieved employees in compliance with California law.

Plaintiff and non-exempt aggrieved employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and non-exempt aggrieved employees the additional wages to which they were entitled for meal periods and that were not provided.

Plaintiff and other non-exempt aggrieved employees consistently worked shifts of five and a one-half (5 ½) hours or more, entitling to at least one meal period.

Plaintiff and other non-exempt aggrieved employees would not receive legally compliant thirty (30) minute first meal breaks. Based on information and belief, non-exempt aggrieved employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods, and/or work through part or all their meal periods due to understaffing, the nature and constraints of their job duties and/or commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal breaks completely.

For example, based on information and belief, non-exempt aggrieved employees were forced to take late meal periods in order to complete assigned job duties. Based on information and belief, non-exempt aggrieved employees were at times interrupted during purported meal periods and/or had meal periods cut short and/or restricted to Defendant's premises due to the need to continue assigned job duties.

For example, Plaintiff was at times required to take shortened meal periods and/or interrupted meal periods and/or take his meal period late (i.e. after working more than five (5) hours) due to the need to complete assigned job duties.

For example, based on information and belief, on at least five (5) occasions, Plaintiff was required to take his meal period after working more than five (5) hours, however, Defendant did

not pay Plaintiff a meal period premium for each late and/or otherwise legally non-compliant meal period.

Based on information and belief, other non-exempt aggrieved employees were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted, cut short, restricted to Defendant's premises and/or otherwise on duty due to commentary from supervisors, understaffing, the nature and constraints of their job duties, and/or the need to meet Defendant's goals and expectations.

Based on information and belief, Defendant implemented policies and/or practices that failed to relieve non-exempt aggrieved employees of all duties and Defendant's control during unpaid meal periods.

Based on information and belief, Defendant required non-exempt aggrieved employees to complete off-the-clock work prior to their scheduled shift time which Defendant failed to take into account when scheduling meal periods for non-exempt aggrieved employees. Based on information and belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

Based on information and belief, Defendant had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of Defendant's control owed to Plaintiff and other non-exempt aggrieved employees in violation of California's meal period laws.

Based on information and belief, per Defendant's uniform policy and practice, non-exempt aggrieved employees who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal break.

Based on information and belief, despite Defendant's failure to provide lawful meal periods, Defendant implemented a policy and/or practice of rounding the start and end times of Plaintiff's and other non-exempt aggrieved employees' meal periods and/or automatically deducting at least thirty minutes per shift for missed and/or otherwise unlawful meal periods (including meal periods restricted to Defendant's premises), despite having actual and/or constructive knowledge that Plaintiff and other non-exempt aggrieved employees did not receive lawful meal periods.

Moreover, based on information and belief, Defendant failed to keep accurate records of the true start and end times of Plaintiff's and non-exempt aggrieved employees' meal periods. Based on information and belief, to the extent meal period were recorded, Defendant illegally rounded the start and end times of purported meal periods resulting in Plaintiff and other non-exempt aggrieved employees not being paid for all time worked as well as late and/or shortened meal periods. See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

Based on information and belief, Defendant failed to instruct Plaintiff and other non-exempt aggrieved employees as to the timing and duty-free nature of meal periods. Based on further information and belief, Defendant did not have a compliant written meal break policy, nor did Defendant have any sort of compliant policy in practice. Liability for the non-exempt aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. (*Brinker, supra*, 53 Cal.4th 1004.)

Plaintiff is further informed and believes and thereon alleges that Defendant had actual and/or constructive knowledge that their time-rounding and/or auto-deduction policies and practices resulted in the denial of lawful meal periods owed to Plaintiff and other non-exempt aggrieved employees, in violation of California's meal period laws.

Defendant failed to pay Plaintiff and other non-exempt aggrieved employees, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. Defendant either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages. The aforementioned conduct also results in violations of Labor Code sections 226.7, 512, and 1198- 1199, and all applicable IWC Wage Orders, section 1 l(A) and (C) along with all applicable IWC Wage Orders. These violations subject Defendant to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each non-exempt aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated. Defendant's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit periods of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest periods. Each failure to authorize rest periods as so required is itself a violation of California's rest period laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and non-exempt aggrieved employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and non-exempt aggrieved employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and non-exempt aggrieved employees for rest periods that were not authorized or permitted. Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and non-exempt aggrieved employees. Defendant required Plaintiff and non-exempt aggrieved employees to work through their rest periods since Defendant was short-staffed. Plaintiffs and non-exempt aggrieved employees' rest breaks were often times short, late or interrupted. Accordingly, Defendant's policy and practice was for Plaintiff and non-exempt aggrieved employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and non-exempt aggrieved employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and non-exempt aggrieved employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

Defendant did not properly authorize and provide Plaintiff and other non-exempt aggrieved employees with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

Plaintiff and other non-exempt aggrieved employees were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest breaks per California law. Based on information and belief, Defendant had no policy in place nor instruction as to the taking of duty-free rest periods. Based on information and belief, Defendant did not have a compliant written rest period policy, nor did Defendant have any sort of compliant rest period policy in practice.

For example, based on information and belief, non-exempt aggrieved employees were at times unable to take compliant rest periods due to their need to complete assigned job duties and/or were unable to take a net ten-minute rest period in a suitable rest area and/or had purported rest periods restricted to Defendant's premises.

For example, Plaintiff was restricted to the work premises during any rest periods and as such was not relieved of all duties and Defendant's control during any rest periods, in violation of California rest period law.

Based on information and belief, Defendant did not have a lawful policy, instruction, or practice as to the taking, timing, or duty-free nature of rest periods. Based on information and belief, Defendant failed to authorize and permit rest periods that were a "net" ten minutes in a suitable rest area, and instead, to the extent rest periods were provided, Defendant limited Plaintiff and other non-exempt aggrieved employees to only ten-minute rest periods, requiring them to be back at their workstations within ten minutes of leaving their work stations, in violation of California rest period law.

Based on information and belief, non-exempt aggrieved employees' rest periods were interrupted, cut short, on duty, restricted to premises and/or late due to understaffing, the nature and constraints of their job duties, and/or due to commentary from supervisors/ managers pressuring non-exempt aggrieved employees to skip rest breaks completely or otherwise take non-compliant rest periods.

Moreover, based on information and belief, Defendant failed to provide any form of a third rest period on shifts lasting longer than ten hours.

Based on information and belief, Defendant implemented policies and/or practices that failed to relieve Plaintiff and other non-exempt aggrieved employees of all duties and Defendant's control during rest periods.

Based on information and belief, non-exempt aggrieved employees were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once tasks were completed, and/or as time permitted.

Furthermore, Defendant failed to pay a rest period premium for each day in which non-exempt aggrieved employees experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Defendant failed to pay Plaintiff and other non-exempt aggrieved employees, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. Defendant either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages. The aforementioned conduct also results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject Defendant to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, § 20. Each violation of each Labor Code section and

Wage Order provision results in a separate civil penalty, for each non-exempt aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated

Failure to Provide Suitable Resting Facilities

Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

Defendant's locations/facilities are generally similar in layout and design, and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Defendant could have provided non-exempt aggrieved employees with a resting facility within Defendant's facilities/locations with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom). As a result, non-exempt aggrieved employees were forced to adjust to areas not conducive to resting, including but not limited to leaning up against the wall, or search for facilities outside of Defendant's premises which are not designated or reserved for rest, such as their personal vehicles.

Defendant did not provide non-exempt aggrieved employees with suitable resting facilities during their hours of work, particularly during meal and/or rest periods.

Defendant's failure to provide suitable resting facilities to non exempt aggrieved employees violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations

"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period... " The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is

suffered or permitted to work, whether or not required to do so." See §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.) Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." (Cal. Lab. Code § 1194.2.)

Defendant failed to compensate Plaintiff and other non-exempt aggrieved employees for all hours worked by virtue of Defendant's automatic deduction and time rounding policies for shift start and shift end times and meal period start and end times, and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods as explained above.

Based on information and belief, Defendant implemented a policy and/or practice of rounding meal period start and end times and/or automatically deducting at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that Plaintiff and other non-exempt aggrieved employees were subject to Defendant's control during purported meal periods and/or were otherwise not afforded with lawful meal periods, depriving Plaintiff and non-exempt aggrieved employees of all wages owed.

Based on information and belief, non-exempt aggrieved employees were not paid for all hours worked due to Defendant's policy and/or practice of paying according to scheduled hours worked instead of actual time worked, and/or mandated off-the clock work policies and/or practices.

For example, based on information and belief, Defendant required non-exempt aggrieved employees to be at their assigned workstations at the start of a scheduled shift, thereby forcing non-exempt aggrieved employees to gather work-related equipment and/or safety gear, make any necessary adjustments to tools/equipment and/or perform maintenance/cleaning tasks, don work clothing/uniforms and/or protective equipment, and/or complete other work tasks prior to their scheduled shift and/or prior to clocking in/signing in, thereby resulting in pre-shift off-the-clock work.

Based on information and belief, non-exempt aggrieved employees were required to complete other off-the-clock work tasks after clocking out for the end of their shifts and/or during uncompensated meal periods, resulting in off-the-clock work and the underpayment of minimum and overtime wages owed to non-exempt aggrieved employees.

For example, based on information and belief, Defendant required non-exempt aggrieved employees to clock out for the end of their shifts but to continue working due to the need to return/maintain tools, clean and/or organize their work stations/areas, provide shift status updates and/or debriefings and/or participate in work meetings, respond to work-related communications and/or perform other work tasks off-the-clock, resulting in the underpayment of minimum wages and overtime wages owed to non-exempt aggrieved employees.

For example, Plaintiff was required to perform off-the-clock work, including but not limited to, attending off-the-clock work-related meetings and/or completing other off-the-clock work tasks prior to clocking in for the start of his shift and/or after clocking out for the end of his shift, during unpaid meal periods and/or otherwise outside of Plaintiff scheduled shift times.

For example, Plaintiff was required to attend at least two work-related meetings outside of his scheduled shift times, with one off-the-clock work-related meeting lasting at least two (2) to three (3) hours and the other lasting at least twenty (20) to thirty (30) minutes in length, resulting in Defendant's failure to compensate Plaintiff for all hours worked and the underpayment of wages owed to Plaintiff.

Based on information and belief, Defendant did not compensate non-exempt aggrieved employees for time spent donning and doffing personal protective equipment and/or uniforms (e.g., rubber gloves, hairnets, aprons, hats, and/or face masks) during meal periods, before the start of a scheduled shift, and/or after completing a scheduled shift, resulting in the underpayment of wages owed to non-exempt aggrieved employees.

Based on information and belief, at times, non-exempt aggrieved employees were required to complete off-the-clock work outside of scheduled shifts due to work-related phone calls and/or messages they received to their phones/mobile devices and were required to respond to, including but not limited to, communications from supervisors regarding scheduling and/or other work tasks, resulting in the underpayment of wages owed to non-exempt aggrieved employees.

Plaintiff and other non-exempt aggrieved employees were required to perform other off-the-clock work for which they were not compensated. For example, based on information and belief, at times, Defendant's biometric/electronic employee time-keeping system malfunctioned such that non-exempt aggrieved employees were required to either reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-the-clock work and the underpayment of wages owed to non-exempt aggrieved employees. Based on information and belief, non-exempt aggrieved employees experienced the same issues when docking out for shifts and/or back in for meal periods. This time spent under Defendant's control was not recorded and not compensated and resulted in unpaid minimum wages owed to non-exempt aggrieved employees.

Moreover, based on information and belief, non-exempt aggrieved employees who opened their work locations were required to first unlock the doors, turn on all the lights in the restaurant/facility and/or deactivate the alarm before clocking in for work, resulting in pre-shift off-the-clock work and the underpayment of wages owed to non-exempt aggrieved employees. Based on further information and belief, non-exempt aggrieved employees in charge of closing their location(s) were required to first clock out for their shifts before enabling the alarm, turning off all the lights in the facility and/or locking the doors. This resulted in additional off-the-clock post-shift work that was not compensated and the underpayment of wages owed to non-exempt aggrieved employees. Based on information and belief, Defendant required non-exempt aggrieved employees to undergo COVID-19 temperature screenings and/or complete questionnaires prior to beginning their scheduled shift and/or prior to clocking/signing in, thereby, resulting in pre-shift off-the-clock work.

Based on information and belief, at times, Defendant required non-exempt aggrieved employees to travel between Defendant's restaurants, facilities and/or locations without compensating non-exempt aggrieved employees for the travel time. For example, based on information and belief, due to scheduling issues and/or understaffing, non-exempt aggrieved employees were at times required after working at their scheduled facility location to cover a shift at another of Defendant restaurants/facilities/locations but were not compensated for the time spent driving to the second restaurant/facility, resulting in the underpayment of minimum and overtime wages owed to non-exempt aggrieved employees.

Based on information and belief, Defendant failed to compensate non-exempt aggrieved employees for all time spent completing Defendant required trainings and/or courses (e.g., food safety and/or food handler courses) and/or testings and/or certifications (e.g., food handler certifications).

Based on information and belief, Defendant failed to pay non-exempt aggrieved employees the applicable minimum wage for the county and/or city within which the non-exempt aggrieved employee worked in California.

Moreover, based on information and belief, Defendant failed to pay Plaintiff and/or other non-exempt aggrieved employees split shift premium wages when they worked split shifts during the relevant period. For example, based on information and belief, at times, Defendant required Plaintiff and/or other non-exempt aggrieved employees to work two separate shifts in the same day. Based on information and belief, Defendant failed to pay Plaintiff and/or other non-exempt aggrieved employees split shift compensation whenever Plaintiff's and/or other non-exempt aggrieved employees' work schedules were interrupted by non-paid non-working periods established by Defendant, which resulted in a violation of the applicable Wage Order (See section 4 of all applicable Wage orders, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday...). See, also, Cal. Code Regs. Tit. 8, § 11050 (when an employee works a split shift, one (1) hour's

pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment). Defendant also failed to separately itemize these split shift premium wages on Plaintiff's and/or other non-exempt aggrieved employees' wage statements, in violation of Labor Code sections 510, 1194 and all applicable IWC Wage Orders. See, https://www.dir.ca.gov/dlse/split_shift.htm. (The employer must itemize the premium payment on the pay stub provided to the employee, and it should be shown as a separate category such as "Split Shift Premium" and should not be lumped into another category such as wages, bonus, etc. Defendant failed to separately account for the split shift premiums earned by Plaintiff and/or other non-exempt aggrieved employees on their wage statements.

Based on information and belief, Defendant failed to pay non-exempt aggrieved employees for time they were required to spend completing orientation, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by Defendant. Based on information and belief, this work time was completed off-the-clock and was not compensated.

Based on further information and belief, Defendant implemented a time-rounding system that as applied systematically deprived Plaintiff and other non-exempt aggrieved employees of compensable time because the time-rounding system implemented by Defendant would almost always, if not always, result in understating actual compensable work time. Defendant's failure to pay for all time worked by virtue of their time-rounding practices resulted in the underpayment of minimum wages owed to Plaintiff and non-exempt aggrieved employees as well as unpaid overtime wages for those non-exempt aggrieved employees who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Defendant's failure to pay for all time worked by virtue of their time rounding, auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of minimum wages owed to Plaintiff and non-exempt aggrieved employees as well as unpaid overtime wages for those non-exempt aggrieved employees who worked more than eight (8) hours in a day and/or more than forty (40) hours in a week.

Based on information and belief, Defendant had actual and/or constructive knowledge that their time rounding policies/practices, auto-deduction policies and practices, failure to provide lawful meal periods and/or other off-the-clock work resulted in the underpayment of minimum wages owed to Plaintiff and other non-exempt aggrieved employees, in violation of California's minimum wage laws.

These violations subject Defendant to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each non-exempt aggrieved

employee, for each pay period during which the referenced statutes and Wage Order provisions were violated.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and non-exempt aggrieved employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and non-exempt aggrieved employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and non-exempt aggrieved employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and non-exempt aggrieved employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Based on information and belief, Defendant failed, and continue to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when Plaintiff and other non-exempt aggrieved employees began and ended each work period, time records of meal periods, and accurate itemized wage statements.

Based on information and belief, Defendant failed and continue to fail to keep accurate and complete records showing total hours worked by plaintiff and non-exempt aggrieved employees by virtue of Defendant's time rounding and/or auto deduction policies and practices and/or other off-the-clock work policies and practices.

Defendant failed and continue to fail to keep accurate and complete records showing total hours worked by virtue of Defendant's failure to relieve Plaintiff and non-exempt aggrieved employees of all duties and Defendant's control for unpaid meal periods, resulting in unpaid hours worked.

Based on information and belief, Defendant further failed, and continue to fail, to record the true start and end times of Plaintiff's and non-exempt aggrieved employees' meal periods.

Based on further information and belief, Defendant further failed and continue to fail, to record the true start and end times of Plaintiff and non-exempt aggrieved employees' work shifts.

Additionally, Defendant failed, and continue to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for Plaintiff and non- exempt aggrieved employees.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods. Defendant's failure to keep accurate and complete payroll records for Plaintiff and non-exempt aggrieved employees violates Labor Code sections 1174, 1198, 1199, and all applicable IWC Wage Orders, section 7. These violations subject Defendant to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each non-exempt aggrieved employee, results in a separate civil penalty.

Violations of Labor Code Sections 226(b)-(c), 1198.5, and 432:

Time and Pay Records

Labor Code section 226 and all applicable IWC Wage Orders, section 7 require that employers keep the following information on file for each employee for a minimum of three years: The employee's dates of employment; the employee's hourly rates and the corresponding number of hours worked by the employee at each hourly rate, when the employee begins and ends each work period (including meal periods) and split intervals; total hours worked by the employee; all deductions; gross wages earned; and net wages earned.

Section (b) of Labor Code section 226 further requires employers to "afford current and former employees the right to inspect or receive a copy of records pertaining to their employment upon reasonable request to the employer." Section (c) of Labor Code section 226 provides that, "an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction." An employer's failure to comply within this timeframe entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 226(f).

Personnel Records

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

Based on information and belief, Defendant failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, Defendant failed and continues to fail to timely produce complete payroll and personnel records when requested by non-exempt aggrieved employees and/or exempt aggrieved employees.

These violations subject Defendant to penalties under Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage Order provision, for each non-exempt aggrieved employee and each exempt aggrieved employee, results in a separate civil penalty.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and exempt and non-exempt aggrieved employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. On information and belief, Plaintiff and exempt and non-exempt aggrieved employees were required to purchase uniforms and personal protective gear and/or work tools and wash and maintain their heavily soiled uniforms and personal protective/safety gear and/or work tools and purchase a special detergent for the uniform washing but were not compensated for that. Further, Plaintiff and exempt and non-exempt aggrieved employees were required to use their personal cellular telephones for work purposes to communicate with supervisors and coworkers regarding their work schedules and work assignments but were not compensated for cell phone usage. Plaintiff and exempt and non-exempt aggrieved employees were also required to use their personal vehicles to drive to the grocery stores to purchase groceries when Defendant was out of stock but were not reimbursed

for mileage. Plaintiff and exempt and non-exempt aggrieved employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and exempt and non-exempt aggrieved Employees for these employment-related expenses.

Based on information and belief, Plaintiff and non-exempt aggrieved employees and exempt aggrieved employees were improperly required to provide and maintain work tools that are supposed to be the responsibility of the employer.

Based on information and belief, Defendants shifted the costs of doing business onto non-exempt aggrieved employees and exempt aggrieved employees by requiring them to pay for their business expenses including but not limited to, uniforms/work clothing/work shoes, personal protective/safety gear and/or the use of non-exempt aggrieved employees' and exempt aggrieved employees' personal mobile phone and data usage for work-related purposes including but not limited to receiving and responding to work-related messages and/or phone calls. For example, on information and belief, non-exempt aggrieved employees and/or exempt aggrieved employees received calls/messages to their personal cell phones/mobile devices from supervisors and/or other non-exempt aggrieved employees and/or exempt aggrieved employees regarding scheduling and/or other work tasks but were not provided any and/or full reimbursement from Defendant for this personal cell phone use.

Based on information and belief, non-exempt aggrieved employees and exempt aggrieved employees were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear and/or work tools (e.g., hand tools) and/or equipment required to carry out their assigned job duties. For example, based on information and belief, non-exempt aggrieved employees and/or exempt aggrieved employees were not reimbursed for the costs of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear, such as, but not limited to, face masks, gloves, hairnets and/or work shoes.

For example, Plaintiff was required to purchase and/or maintain his own uniforms, work clothing, protective and/or safety gear, including but not limited to, work pants, work shoes and/or other uniforms, work clothing, protective and/or safety gear, however, Defendant failed to reimburse Plaintiff at all and/or in full for the business expenses Plaintiff incurred in connection therewith.

Based on information and belief, at times, Defendant required non-exempt aggrieved employees and/or exempt aggrieved employees to use their personal vehicles for work without reimbursing them for the personal vehicle expenses they incurred in connection therewith. For example, based on information and belief, at times, Defendant required non-exempt aggrieved employees and/or exempt aggrieved employees to travel from one of Defendant's facilities/restaurants to a second of Defendant's facilities/restaurants for work and/or otherwise required non-exempt

aggrieved employees and/or exempt aggrieved employees to use their personal vehicles to carry out their assigned job duties without reimbursing non-exempt aggrieved employees and/or exempt aggrieved employees for the expenses incurred in connection with Defendant's business use of their personal vehicles. As such, Defendant failed to compensate non-exempt aggrieved employees and/or exempt aggrieved employees at the legally mandated Internal Revenue Service (IRS) per mile compensation rates in effect during the relevant period.

As explained above, based on information and belief, non-exempt aggrieved employees and exempt aggrieved employees were not reimbursed for the cost of using their personal phone for work-related purposes and/or the cost of purchasing and/or maintaining work uniforms/work clothing/work shoes, personal protective/safety gear.

Based on information and belief, non-exempt aggrieved employees and exempt aggrieved employees were improperly required to pay for business expenses that are supposed to be the responsibility of Defendant.

As a pattern and practice, Defendant regularly failed to reimburse and indemnify non-exempt aggrieved employees and exempt aggrieved employees for business expenses. Pursuant to California Labor Code section 2802, Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees were entitled to be reimbursed for all reasonable expenses associated with carrying out Defendant's orders and/or carrying out the duties assigned by Defendant.

As described herein, Defendant regularly failed to reimburse and indemnify Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees for all reasonable expenses associated with carrying out their job duties. Defendant's failure to provide Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees with full reimbursement for all reasonable expenses associated with carrying out their duties required that Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 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.

Labor Code § 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code § 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in

relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, Defendant failed to timely pay non-exempt aggrieved employees and exempt aggrieved employees all wages that were due and owing upon termination or resignation. Based on information and belief, Defendant untimely provided final wages to non-exempt aggrieved employees and exempt aggrieved employees without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, non-exempt aggrieved employees' and exempt aggrieved employees' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay and/or paid time off. Moreover, non-exempt aggrieved employees' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials).

For example, Defendant failed to furnish Plaintiff with any final paycheck at the time of termination, instead requiring Plaintiff to wait at least until the end of the pay period to receive a final paycheck, and Plaintiff's late final paycheck was devoid of all wages owed including but not limited to all owed minimum wages, overtime wages, premium wages, vacation pay, all owed sick leave and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, any shift differentials).

Based on further information and belief, Defendant failed to timely provide all owed wages immediately upon discharge of employment. Based on information and belief, at times, non-exempt aggrieved employees experienced breaks in employment caused by Defendant whereby non-exempt aggrieved employees would not be called in for work for longer than a single pay period due to including but not limited to Defendant's lack of work or lack of assignments. Such instances qualify as a discharge of employment. Yet, Defendant failed to timely pay all owed wages at the end of such periods of employment, in violation of including but not limited to Labor Code section 201-202.

Within the applicable statute of limitations, the employment of Plaintiff and many other non-exempt aggrieved employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continue to fail to pay Plaintiff and terminated non-exempt aggrieved employees, without abatement, all wages required to be paid by Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

These violations subject Defendant to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a separate civil penalty, for each exempt aggrieved employee and each non-exempt aggrieved employee for each pay period during which the statute provisions were violated. Moreover, Defendant is liable to Plaintiff and non-exempt aggrieved employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. Lab. Code § 226(e)(2)(B)(iii).

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab. Code § 226(e)(1).

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, the failure to list the true net wages earned, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked. Additionally, Defendant failed to provide the employer entity correct address and names on the wage statements and wrongfully listed sick pay in the total number of hours worked.

As Defendant failed to provide Plaintiff and non-exempt aggrieved employees with meal and rest periods that complied with Labor Code section 226.7, the wage statements Defendant issued to Plaintiff and non-exempt aggrieved employees failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

Defendant issued wage statements to Plaintiff and all non-exempt aggrieved employees that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by Plaintiff and all non-exempt aggrieved employees (by virtue of rounded time entries, automatic deduction for meal periods/failure to relieve non-exempt aggrieved employees of all duties and employer control during unpaid meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or other off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Separately, and independent of the above allegations, based on information and belief, Defendant issued wage statements to non-exempt aggrieved employees that failed to list the total hours worked, in violation of including but not limited to, Labor Code section 226 (a)(2).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226. (*Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1337).

Based on information and belief, wage statements issued by Defendant failed to list the inclusive dates of the pay period for which the non-exempt aggrieved employee or exempt aggrieved employee is being paid.

For example, based on information and belief, wage statements issued by Defendant failed to list the inclusive dates of the pay period for which the non-exempt aggrieved employee is being paid.

For example, based on information and belief, at times, Defendant issued wage statements to non-exempt aggrieved employees containing payment for hours worked during previous pay periods, yet Defendant's wage statements do not include the inclusive dates of the accurate pay period for that retroactive pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with.

For example, based on information and belief, at times, Defendant issued wage statement(s) to non-exempt aggrieved employees that list a category for "Retro" pay without including the inclusive dates of the accurate pay period for that "Retro" pay, further failing to list the total hours worked for the pay period, including but not limited to, the total hours worked for the pay period the retroactive pay corresponds with, in violation of including but not limited to, Labor Code section 226(a)(2) and/or Labor Code section 226(a)(6).

Defendant's failure to accurately list all hours worked on all wage statements caused confusion to Plaintiff and caused and continue to cause confusion to the non-exempt aggrieved employees over whether they received all wages owed to them. Plaintiff and non-exempt aggrieved employees were injured by Defendant's failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked, not paying all sick leave wages at the proper rates, and failing to provide meal and rest break premiums, Defendant has violated California Labor Code § 226 by willfully failing to furnish Plaintiff and all non-exempt aggrieved employees with accurate, itemized wage statements. As described herein, based on information and belief, Defendant also failed to incorporate all forms of non-discretionary compensation earned during the pay period into the overtime pay rate calculation, and as such, failed to display the proper overtime rate(s) for each hour of overtime worked by Plaintiff and other non-exempt aggrieved employees.

Based on information and belief, wage statements issued by Defendant have failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

For example, based on information and belief, wage statements issued by Defendant have failed to list all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9) due to Defendant's failure to list an overtime rate category at all and/or failure to list a category containing the proper overtime rate.

Based on information and belief, Defendant issued wage statements that failed to accurately list all deductions, in violation of Labor Code section 226(a)(4).

Moreover, based on information and belief, Defendant issued wage statements to Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees that further violate Labor Code section 226(a), by among other things, failing to list the correct name and/or address of the legal entity that is the employer.

As a result, the wage statements provided to Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees were not accurate and did not include all of the statutorily required information.

These violations subject Defendant to civil penalties under Labor Code section 226. Each violation results in a separate civil penalty, for each non-exempt aggrieved employee and each exempt aggrieved employee, for each pay period during which the statute provisions were violated.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly aggrieved employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly aggrieved employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and non-exempt aggrieved employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Produce Personnel Records

The Aggrieved Employees have the right to inspect and receive a copy of their personnel files pursuant to Labor Code § 1198.5. This statute applies to both former and current employees. Labor Code § 1198.5 requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this the frame likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Labor Code § 1198.5(k). Labor Code § 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Based on information and belief, Defendant failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested pursuant to Labor Code §§ 226, 1198.5, 432, and/or the applicable Wage Order. Based on information and belief, Defendant failed and continue to fail to timely produce complete payroll and personnel records when requested by exempt or non-exempt aggrieved employees.

Refusal to Make Payment

Labor Code § 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Defendant violated and continue to violate Labor Code § 216 by failing to pay Plaintiff and non exempt aggrieved employees for all hours worked at the proper wage rate and by failing to pay Plaintiff and non exempt aggrieved employees an additional hour of pay for each meal and/or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject Defendant to civil penalties under Labor Code § 225.5. Each violation results in a separate civil penalty, for each non-exempt aggrieved employee, for each pay period during which the statute's provisions were violated.

Unlawful Deductions

Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer to said employee." Based on information and belief Defendant made unlawful deductions from non-exempt aggrieved employees and/or exempt aggrieved employees paychecks during the relevant period including without limitation, deducting costs of uniforms and/or other business costs and/or deducting wages for purported overpayments from previous pay periods and/or unlawfully deducting wages for negligently damaged property. Such a practice is in violation of including but not limited to, Labor Code Sections 221-222 which subjects Defendant to civil penalties under Labor Code Section 2699.

Each violation results in a separate civil penalty, for each non-exempt aggrieved employee and exempt aggrieved employee, for each pay period during which the statute provisions were violated. See Lab. Code §225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty... for each failure to pay each employee").

Failure to Pay All Earned Wages Twice Per Month (Semimonthly Payment Violations)

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Lab. Code § 204(a). The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the

wages are paid not more than seven calendar days following the close of the payroll period. Lab. Code § 204(d).

Throughout the statute of limitations period applicable to this cause of action, employees were also entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Defendant violated this section by, including but not limited to, failing to pay Plaintiff and other non-exempt aggrieved employees an additional hour of pay for meal and rest periods not provided and/or otherwise unlawful, by failing to compensate employees for all hours worked, and by failing to pay proper premium wage rates for all hours worked. These violations subject Defendant to civil penalties under Labor Code section 210. Each violation results in a separate civil penalty, for each non-exempt aggrieved employee for each pay period during which the statute's provisions were violated.

Moreover, Defendant is liable to Plaintiff and non-exempt aggrieved employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Provide Suitable Seats

Pursuant to applicable IWC Section 14(A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. IWC Section 14(B) states that when 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 areas and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

However, Defendant failed to provide Plaintiff and non-exempt aggrieved employees with suitable seats. Defendant failed to provide Plaintiff and non-exempt aggrieved employees with seats when their work allowed them to sit as well during meal and rest periods. Plaintiff and non-exempt aggrieved employees were required to eat their meals and spend their breaks standing when they had an opportunity to take those breaks.

Based on information and belief, Defendant failed to provide non-exempt aggrieved employees with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, based on information and belief, the nature of the work reasonably permitted the use of seats for at least part of the time that non-exempt aggrieved employees were working. Lastly, based on information and belief, there were periods of time when non-exempt aggrieved employees were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

Defendant's non-exempt aggrieved employees worked in various positions. The nature of non-exempt aggrieved employees' work reasonably permitted the use of seats. However, Defendant failed to provide suitable seating in reasonable proximity to non-exempt aggrieved employees' work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections 1198 and 1199, subjecting Defendant to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each non-exempt aggrieved employee, results in a separate civil penalty. Defendant is liable to Plaintiff and non-exempt aggrieved Employees for the civil penalties provided for in Labor Code §§ 1199 and 2699(f)(2).

Failure to Pay All Accrued Vacation Wages at Termination

California Labor Code section 227.3 provides that when an employer policy provides for paid vacations and/or paid time off, and an employee is terminated without having taken off his, her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the employee's final rate in accordance with such contract of employment or employer policy respecting eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time off upon termination. Based on information and belief, Defendant had and continue to have a uniform policy and practice of failing to allow non-exempt aggrieved employees and exempt aggrieved employees to use their earned vacation/paid time off during their employment and failing to pay all vested, accrued paid time off (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation, including but not limited to, shift differentials) to non-exempt aggrieved employees and/or exempt aggrieved employees upon separation of employment, in violation of California law, including but not limited to, Labor Code section 227.3.

Failure to Provide One Day of Rest in Seven

Under California law, every employee in California is "entitled" to "one day's rest [from labor] in seven"; and, no employer may "cause" their employees "to work more than six days in seven." See Labor Code Sections 551 and 552. Labor Code section 553 provides that a violation of the foregoing sections is a misdemeanor.

Based on information and belief, Defendant has and continues to have a uniform policy and practice of requiring non-exempt aggrieved employees to work at least seven days consecutively

in a workweek, in violation of including but not limited to, Labor Code Section 551. Based on information and belief, Plaintiff and/or other non-exempt aggrieved employees were suffered, permitted, or required to work at least seven (7) days consecutively in a workweek, in violation of California law, including but not limited to Labor Code Section 551.

Failure to Provide Paid Sick Leave and Written Notice of Available Paid Sick Leave (Violations of Labor Code §§ 245-248.5)

Throughout the relevant time period, Defendant failed to provide proper paid sick leave to Plaintiff and other non-exempt aggrieved employees. Defendant either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to Plaintiff and other non-exempt aggrieved employees by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/automatic deduction policies and practices for meal periods and/or shift start and end times/other required off-the-clock work including but not limited to work completed during unpaid meal periods and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary bonuses, shift differential pay, commission and/or piece-rate compensation and/or other non-discretionary compensation into the sick leave pay rate calculation.

Based on information and belief, Defendant further failed to provide notice of the correct sick leave amount balance available to Plaintiff and other non-exempt aggrieved employees on their wage statements or other written statements.

Based on information and belief, Defendant failed to put non-exempt aggrieved employees on notice of their paid sick leave rights-or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice. In addition, Defendant failed to maintain accurate records of used sick leave and the balance of paid sick leave left to the non-exempt aggrieved employee throughout the relevant time period.

Based on information and belief, throughout the relevant period, Defendant failed to provide notice of sick leave amount balance left for Plaintiff and other non-exempt aggrieved employees, thus affecting their intelligent exercise of their paid sick leave. But for this failure, Plaintiff and other non-exempt aggrieved employees would have used their paid sick leave at least prior to their respective separations, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

This illegal retention of paid sick leave is unlawful, and Plaintiff seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of Plaintiff and all non-exempt aggrieved employees.

In violation of Labor Code section 247.5, Defendant failed to maintain records documenting the hours worked and paid sick days accrued and used by Plaintiff and all non-exempt aggrieved

employees, permitting the presumption that Plaintiff and all non-exempt aggrieved employees were entitled to the maximum number of hours accruable under this article.

Upon information and belief, Defendant further failed and continues to fail to comply with Labor Code section 246, by failing to provide Plaintiff and all non-exempt aggrieved employees with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

Defendant unlawfully retained and continues to retain paid sick leave that should have been paid but was not, as a result of Defendant's failure to properly institute a paid sick leave program.

On information and belief, Plaintiff alleges that all of these practices were experienced and continue to be experienced by other non-exempt aggrieved employees.

Plaintiff requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to Defendant's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, Plaintiff and other non-exempt aggrieved employees are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. Plaintiff requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Failure to Pay Reporting Time Pay

Section 5 of all applicable IWC Wage Orders, provides as follows:

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid two (2) hours at the regular rate of pay, which shall not be less than the minimum wage. Reporting time pay constitutes wages. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094.

Non-exempt aggrieved employees were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order. For example, based on information and belief, at times, Plaintiff and/or other non-exempt aggrieved employees reported to work for a scheduled shift but were sent home and/or were not put to work and were not paid all owed reporting time pay wages in accordance with California law.

Based on information and belief, Defendant has a policy and practice of failing to pay all reporting time wages to non-exempt aggrieved employees, in violation of California law, including but not limited to, the applicable IWC Wage Order, Section 5. Defendant's failure to pay all reporting time wages to non-exempt aggrieved employees violated and continue to violate the applicable Wage Order, section S(A)-(B) and the California Labor Code, including but not limited to section 1198.

Plaintiff and non-exempt aggrieved employees were not paid reporting time wages in accordance with California law, including but not limited to the applicable IWC Wage Order.

Failure to Pay Gratuities (Violation of Labor Code sections 351 and 353)

Labor Code § 351 provides that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. Based on further information and belief, Defendant also failed to keep accurate records of all tips received, in violation of Labor Code § 353.

Throughout the statutory period, based on information and belief Defendant failed to pay Plaintiff and the Aggrieved Employees all gratuities received by them from Defendant's customers. Based on information and belief, Defendant failed to ensure that non-exempt aggrieved employees fully received the gratuities left for them by patrons, in that Defendant and their agents would collect and/or take a portion of the gratuities for themselves, in violation of Labor Code Section 351. Based on further information and belief, Defendant also failed/fails to keep accurate records of all tips received, in violation of Labor Code Section 353. Based on information and belief, Defendant failed to pay gratuities paid by customers using credit cards to non-exempt aggrieved employees by the next regular payday following the credit card payment, in violation of Labor Code section 351.

Based on information and belief, Defendant charged an additional service charge to their customers/patrons. Customers are led to believe that the service charge will be paid to Defendant's non-exempt aggrieved employees. Instead, Defendant keeps a majority (if not the entirety) of the service charge, thereby depriving non-exempt aggrieved employees of the service charge/gratuity that is left by the patron/customer for the non-exempt aggrieved employees. (See *O'Grady v Merchant Exchanges Production, Inc.*, 41 Cal.App.5th 771, 790 (a mandatory service charge can constitute a gratuity that is intended to the employees providing the service).)

Pursuant to PAGA, Defendant is liable for penalties of \$100 per pay period payable to each non-exempt aggrieved employee for the first violation of Labor Code Sections 351 and 353 they experienced within the statutory period, and \$200 per pay period for each additional violation.

As a result, Defendant is liable to Plaintiff and non-exempt aggrieved employees for the civil penalties provided for in Labor Code § 2699(f)(2).

Standard Conditions of Labor Violations

Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, Defendant's violations, including but not limited to, with respect to meal periods, rest periods, recordkeeping provisions, minimum wages and overtime wages, business expenses, suitable resting facilities, seating, reporting time pay, split shift premium wages, and other violations described herein result in separate violations of sections 1198 and 1199, which subject Defendant to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations

Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, Defendant willfully and systematically denied Plaintiff and other non-exempt aggrieved employees of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Defendant acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Defendant paid Plaintiff and other non-exempt aggrieved employees lower wages than those they were entitled to while purporting that Plaintiff and all non-exempt aggrieved employees were properly paid. As such, Plaintiff and all non-exempt aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Unlawful Agreements/ Unlawful Criminal History Inquiries:

Unlawful Agreements

Labor Code section 432.5 provides that "no employer... shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer ... to be prohibited by law." Based on information and belief, Defendant required Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to unlawful conditions of employment including but not limited to unlawful non-solicitation/non-compete agreements, unlawful confidentiality and/or nondisclosure agreements, unlawful releases and/or waivers, including but not limited to, unlawful meal period waivers, unlawful forum selection

clauses and/or choice of law provisions/agreements and/or unlawful criminal and/or financial checks as a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

Labor Code section 432.6(a), provides that "a person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right. .."Based on information and belief, Defendant required non-exempt aggrieved employees to sign meal period waivers that were universally signed as a condition of employment, including but not limited to, during the onboarding process. By requiring non-exempt aggrieved employees to sign unlawful meal period waivers as a condition of obtaining and/or maintaining employment, Defendant violated Labor Code section 432.5. Further, these invalid waivers are otherwise unlawful under Labor Code section 432.6.

The California Labor Code places certain procedural and substantive limit on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, Defendant ordered unlawful financial credit checks on non-exempt aggrieved employees and exempt aggrieved employees, in violation of Labor Code section 1024.5, and required non-exempt aggrieved employees and exempt aggrieved employees to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a further violation of Labor Code section 432.5.

Based on information and belief, Defendant also required non-exempt aggrieved employees and exempt aggrieved employees to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, Defendant required non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, et seq. and 15 U.S.C. section 1681, et

seq., including but not limited to by failing to provide a clear and conspicuous disclosure (and/or failing to provide any disclosure at all), failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA, failing to provide a way by which the individual could request a copy of the report, failing to disclose the name, address, and telephone number of the third party preparing the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, Defendant violated Labor Code section 432.5.

Based on information and belief, Defendant also required non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to provide ongoing consent to Defendant to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, Defendant knew that requiring non-exempt aggrieved employees and exempt aggrieved employees to agree to unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By requiring non-exempt aggrieved employees, and exempt aggrieved employees agree in writing to unlawful provisions as a condition of employment, Defendant violated Labor Code section 432.5.

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and belief, Defendant asked non-exempt aggrieved employees, and exempt aggrieved employees about arrests not resulting in convictions on their employment application, in violation of California law.

Upon information and belief, Defendant, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked non-exempt aggrieved employees and exempt aggrieved employees about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on their employment application in violation of California law.

By asking about arrests not resulting in convictions, Defendant violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment

offer, Defendant violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to disclose arrests and/or convictions as a condition of employment.

Unlawful PAGA Waiver

Additionally, Defendant violated Labor Code section 432.5 by requiring non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to other unlawful agreements, including but not limited to, an unlawful waiver of PAGA and or representative actions as a condition of employment.

An action pursuant to PAGA "' ... is a representative action on behalf of the state.'" (*Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87.) It is well settled that agreements purporting to waive an employee's right to a trial of PAGA claims is contrary to California law and unenforceable. (See *Iskanian v CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 384 ("We conclude that where, as here, an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law.").)

Moreover, the California Supreme Court has ruled that a court cannot compel arbitration of an aggrieved employee's individual PAGA claim because there is no such thing as an individual PAGA claim. (*Kim v Reins Int'l California, Inc.*, (2020) 9 Cal. 5th 73, 86-87 ("There is no individual component to a PAGA action because 'every PAGA action ... is a representative action on behalf of the state.'").)

Upon information and belief, Defendant required non-exempt aggrieved employees and exempt aggrieved employees to agree in writing to waive their right to a trial of PAGA claims in violation of California law. By requiring non-exempt aggrieved employees and exempt aggrieved employees to agree, in writing, to an unlawful PAGA waiver, Defendant required written agreement to an unlawful provision as a condition of employment which is a violation of labor code section 432.5.

As such, Plaintiff, non-exempt aggrieved employees and exempt aggrieved employees continue to be subject to various unlawful provisions as a condition of employment.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant has violated the above provisions of the Labor Code and the law with respect to non-exempt and exempt aggrieved employees, as well as the provisions that include but are not limited to Labor Code §§ 201-203, 204, 208, 216, 221-223, 226, 226.7, 245-248.6, 351-352, 432, 432.5, 432.6, 432.7, 510, 512, 551, 552, 558, 558.1,

1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

Defendant has violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Plaintiff and other non-exempt aggrieved employees and exempt aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 218.5, 225.5, 226, 226.3, 226.6, 233, 234, 558, 558.1, 1174.5, 1197.1, 1198, 1198.5, 1199, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to their corporate address and address of the agent for service, as indicated on the first page.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional compensation owed or losses incurred by Plaintiff or by any other aggrieved employee of Defendant, Plaintiff expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Lilit Tunyan, Esq.
Partner
TUNYAN LAW, APC

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for submission of your PAGA Case.
Date: Monday, June 5, 2023 9:33:34 AM

6/5/2023

LWDA Case No. LWDA-CM-959669-23
Law Firm : Tunyan Law, APC
Plaintiff Name : Juan Garcia
Employer: C&R Restaurant Group, L.P.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

From: [DIR PAGA Unit](#)
To: ltunyan@tunyanlaw.com
Subject: Thank you for your Amended PAGA Claim Notice Submission.
Date: Wednesday, October 23, 2024 12:12:32 PM

10/23/2024 12:12:07 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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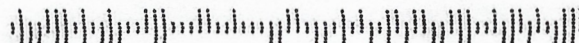
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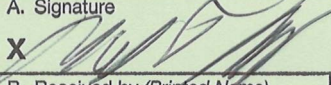
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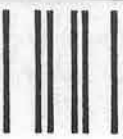
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06/05/2023

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 9590 9402 8114 2349 9465 71		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
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Grand Total: \$12.10

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite 285 Glendale, California 91203.

On the date indicated below, I served the document described as: **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

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Direct Dial (949) 851-7271

Fax (949) 825-5438

Attorneys for Defendant C&R RESTAURANT GROUP, L.P.

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

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 15, 2024 at Glendale, California.

Lilit Tunyan
Name



Signature