

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com
Karoline D. Kitlowski [CSB No. 347692]
karoline@sullivanlawgroupapc.com
SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
CAPSTONE LAW, APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

Attorneys for Plaintiff WARREN HARRIS, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

WARREN HARRIS, in a Representative capacity only, and on behalf of other members of the general public similarly situated,

Plaintiff

v.

POCINO FOODS COMPANY, a California Corporation; and DOES 1-10, inclusive

Defendants

CASE NO. 23PSCV02840

COMPLAINT FOR:

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

COMES NOW Plaintiff WARREN HARRIS ("Plaintiff"), in a Representative capacity only, on behalf of all aggrieved employees, and on behalf of other members of the general public similarly situated, and alleges for his complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA") may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's injuries occurred in the County of Los Angeles, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant POCINO FOODS COMPANY, (Referred to herein as "Defendants" or "PFC"), was and is a California Corporation doing business throughout the state, including the County of Los Angeles, State of California.
4. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.
5. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in so acting was functioning as the agent, servant, partner, and employee of the co-Defendants, and in doing the actions mentioned below, was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
2 co-Defendant. Plaintiff's injuries as herein alleged were proximately caused by said Defendant.
3 Wherever it is alleged herein that any act or omission was done or committed by any specially
4 named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the
5 same act or omission was also done and committed by each and every Defendants named as
6 a DOE, both separately and in concert with the named Defendant or Defendants.

- 7 6. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
8 including DOES 1 through 10, are and at all times herein mentioned were either individuals,
9 sole proprietorships, partnerships, registered professionals, corporations, alter egos or other
10 legal entities which were licensed to do and/or were doing business in the County of Los
11 Angeles, State of California at all times relevant to the subject matter of this action.

12 **FACTUAL BACKGROUND**

- 13 7. On or about June 1, 2020, Plaintiff commenced working for Defendants. Plaintiff's
14 employment with Defendants has lasted through March 10, 2023. Throughout his employment
15 with Defendants, Plaintiff has performed his job in a capable and competent manner and has
16 been commended for doing so.
- 17 8. Throughout the term of his employment, Plaintiff and all other aggrieved employees were, and
18 currently are, denied the benefits and protections of the Labor Code due to Defendants'
19 institutionalized pay practices, standard as to all of Defendants' California-based employees.
- 20 9. On July 11, 2023, counsel for Plaintiff prepared and submitted via online filing a letter to the
21 California Labor & Workforce Development Agency ("LWDA"). A copy of the letter was
22 mailed to Defendants, via USPS Certified Mail. The letter contained the specific provisions
23 of the California Labor Code and Business and Professions Code violated by Defendants, as
24 well as the facts and theories in support of Plaintiff's claims. (Please see **Exhibit 1**, a true and
25 correct copy of this letter.)
- 26 10. The statutory time period for the LWDA to investigate and/or respond, and for the employer
27 to respond, has concluded.

28 //

REPRESENTATIVE ALLEGATIONS

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

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

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

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as though fully set forth

1 herein.

2 20. Labor Code section 1198 states:

3 The maximum hours of work and the standard conditions of labor fixed
4 by the commission shall be the maximum hours of work and the
5 standard conditions of labor for employees. The employment of any
6 employee for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful.

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

10 21. Under applicable California law, “An employer may not employ an employee for a work period
11 of more than five hours per day without providing the employee with a Meal Period of not less
12 than 30 minutes [...] An employer may not employ an employee for a work period of more than
13 10 hours per day without providing the employee with a second Meal Period of not less than
14 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11010 (11)(A).

15 22. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal
16 Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code
17 Regs. § 11010 (11).

18 23. California law requires employers to provide nonexempt employees with a 10-minute Rest
19 Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11010
20 (11).

21 24. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage
22 Order must pay the employee one additional hour of pay at the employee’s regular rate of pay
23 for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal.
24 Code Regs. § 11010 (11), (12).

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

27 26. For example, Defendants do not possess a legal Meal Period policy or legal Rest Period policy,
28 and makes no attempt to ensure that its employees are either timely or wholly provided Meal
29 Periods or Rest Periods.

30 27. Defendants would also pressure employees to either skip, or cut short, Meal Periods and Rest

- 1 Periods, based on customer needs.
- 2 28. In addition, Defendants had notice of Plaintiff working outside of his scheduled and/or
3 reported hours, as well as within his Meal and Rest Periods, but failed to provide any
4 compensation for this work-time.
- 5 29. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees one
6 additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest Period
7 was not provided, as required by Labor Code section 226.7 and IWC Wage Order 1 § (11),
8 (12).
- 9 30. Any payments made by Defendants for non-compliant Meal Periods were not paid at the
10 employee's regular rate in violation of Labor Code section 226.7 and the operative IWC Wage
11 Orders. Instead, these payments were made at an employee's base rate and did not include the
12 value of, *inter alia*, all actual compensation owed, and/or all employee benefits such as, for
13 example, non-discretionary compensation, and other employee benefits.
- 14 31. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor
15 Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be
16 proven at trial.
- 17 32. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on
18 behalf of himself and all other aggrieved employees by and through Labor Code section
19 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover
20 these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below
21 Prayer For Relief.
- 22 33. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
23 pursuant to Labor Code sections 2699(a) for each of these employees.
- 24 34. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
25 section 2699(g)(1).
- 26 //
- 27 //
- 28 //

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

35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

36. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code section 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.*, (2005) 135 Cal. App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, although Defendants would receive "to-the-minute" start and end times (from their employees' mandated timekeeping practices), Defendants would thereafter alter - and deduct time from - the Time Records, prior to payment of compensation to the employees. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation.

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

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

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

40. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code

1 section 2699(g)(1).

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

6 41. Plaintiff hereby incorporates by reference paragraphs 1 through 40 as though fully set forth
7 herein.

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

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

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

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

25 46. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
26 pursuant to Labor Code sections 2699(a) for each of these employees.

27 47. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
28 section 2699(g)(1).

///

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

48. Plaintiff hereby incorporates by reference paragraphs 1 through 47 as though fully set forth herein.

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

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

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

52. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

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

3 54. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
4 section 2699(g)(1).

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

9 55. Plaintiff hereby incorporates by reference paragraphs 1 through 54 as though fully set forth
10 herein.

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

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

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

24 59. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants
25 pursuant to Labor Code sections 2699(a) for each of these employees.

26 60. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code
27 section 2699(g)(1).

28 ///

///

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

61. Plaintiff hereby incorporates by reference paragraphs 1 through 60 as though fully set forth herein.

62. Defendants failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code sections 201 through 203. These violations resulted from, among other unlawful actions, Defendants' willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code sections 226.7, 510, 512, 1197, and 2802, as set forth above.

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

64. As California Labor Code Section 2699 provides for civil penalties recoverable by Plaintiff on behalf of himself and all other aggrieved employees by and through Labor Code section 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For Relief.

65. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code sections 2699(a) for each of these employees.

66. Plaintiff also seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.

//

//

//

//

//

PRAYER FOR RELIEF

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

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

Dated: September 14, 2023

SULLIVAN & YAECKEL LAW GROUP, APC



Eric K. Yaeckel
Ryan T. Kuhn
Katherine D. Kitlowski
Attorneys for Plaintiff WARREN HARRIS, in a
Representative capacity only, and on behalf of other
members of the general public similarly situated

Exhibit 1

SULLIVAN & YAECKEL

LAW GROUP

A PROFESSIONAL CORPORATION

2330 THIRD AVENUE
SAN DIEGO, CALIFORNIA 92101

PHONE 619-702-6760
FACSIMILE 619-702-6761

July 11, 2023

Labor and Workforce Development Agency
Attn. PAGA Administrator

Submitted Via Online Filing

Re: Warren Harris v. Pocino Foods Company
Our File No.: 7365

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by Pocino Foods Company (hereinafter referred to as “PFC”), in the above referenced matter. This “written notice” is filed on behalf of Mr. Harris, and all current and former non-exempt employees employed by PFC. Thank you for your assistance and instruction on this issue.

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

CALIFORNIA LABOR CODE SECTIONS 201-203, 226, 226(a), 226.7, 510, 512, 1194, 1197.1, and 2802, as well as IWC Wage Order 1, or any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11010 *et seq.*

Facts and theories supporting the allegations: Mr. Harris was employed as a non-exempt employee for PFC from approximately June 1, 2020, through March 10, 2023. Throughout the term of Mr. Harris’ employment, PFC required Mr. Harris and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

- PFC failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510,

IWC Wage Order 1, or any other applicable wage orders. This illegal action is due, in part, to PFC's policies of (1) failing to properly retain accurate Time Records, in violation of California law, and (2) failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance, PFC would instruct Mr. Harris to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, PFC would often require Mr. Harris to work extended hours (beyond scheduled hours), without compensation. Further, PFC would contact Mr. Harris outside of normal work hours (*i.e.*, "after hours" or during lunch) without compensation.

- Additionally, among other issues, PFC has notice of Mr. Harris, and others, working outside of their scheduled and/or reported hours, as well as *within* Meal and Rest Periods, but fails to provide any compensation for this work-time. Mr. Harris was frequently scheduled to be "On Call" outside of when his work shifts ended, but was never compensated for this time.

Failure to Provide Compliant Meal Periods

- PFC failed to provide compliant Meal Periods or requisite Meal Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, or IWC Wage Order 1, or any other applicable wage orders. Management pressures its employees to record compliant Meal Periods but makes no attempt to ensure that its employees are either timely or wholly provided Meal Periods. As an example, PFC Time Records (produced and verified by PFC) show that on August 11, 2022, Mr. Hill started a shift at 5:44 p.m. and then clocked out for a Meal Period at 10:49 p.m. On this date, Mr. Hill worked **5 hours and 5 minutes** before receiving a Meal Period. (See Exhibit A). Further, the PFC Wage Statements indicate **no** California Meal Period Penalty was paid for this Pay Period. The employees would often either miss a Meal Period entirely, or be provided a short or untimely Meal Period. Whether or not an employee was provided a Meal Period was often contingent upon the how busy or understaffed the employees were on a given day. Mr. Harris missed his Meal Period at least twice a week due to his heavy workload. Mr. Harris was frequently interrupted during his Meal Periods by supervisors to discuss work related matters or to call him back to work. Mr. Harris felt pressure to either skip, delay, or cut short, a Meal Period.

- PFC would pressure its employees to either skip, or cut short, a Meal Period as employees were expected to respond to supervisors at all times. PFC has never provided a compliant Meal Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions when employees *were* paid Meal Period penalties (*i.e.* California Meal Period Premiums), such payments do not "cure" the stated Labor Code violation under section 226.7. The California Supreme

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

- PFC required its employees to constantly monitor their radios and be “on-call” at all times, specifically during Meal Periods. On occasion, PFC would interrupt, or cut short, its employees’ Meal Periods and require them to return to work. PFC was frequently understaffed, this would result in Mr. Harris being required to respond to supervisors about work related matters during his Meal Periods.
- PFC illegally retained control over its employees during Meal Periods. For example, PFC required its employees to “remain on the premises,” and to remain “On Call” (*i.e.* monitor their radios) at all times, including during Meal Periods.

Failure to Provide Compliant Rest Periods

- PFC failed to provide compliant Rest Periods or requisite Rest Period penalty payments, in violation of, *inter alia*, Labor Code sections 226.7, 512, and IWC Wage Order 1, or any other applicable wage orders. For example, PFC does not possess a legal Rest Period policy, as its Rest Period policy lacks required language under California law. PFC makes no attempt to ensure that its employees are either timely or wholly provided Rest Periods. The employees would often either miss a Rest Period entirely, be provided a short or untimely Rest Period, or be provided only one Rest Period, even when they were working in excess of 6.5 hours a day. PFC would pressure its employees to either skip, or cut short, a Rest Period as employees were expected to respond to supervisors at all times. Mr. Harris often was required to work during Rest Periods in order to complete his daily duties before he ended his shift for the day. PFC has never provided a compliant Rest Period penalty payment to any employee as to the above referenced issues. Finally, on the rare occasions in which

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

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

Wage Statement Violations

- PFC violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Mr. Harris, and other employees were not compensated for all hours worked (due in part to PFC’s requirement that employees list only *scheduled* work-times, not actual work-times.)
- PFC violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, PFC (a) would not provide compensation for all hours and minutes worked, (b) would use an improper (and lesser) Overtime Rate of Pay, and (c) would fail to pay Meal and/or Rest Period penalties when due. PFC failed to properly calculate and pay overtime at the actual overtime rate of pay, as PFC ignores certain compensation when calculating the Regular Rate of Pay. Further, on the rare occasions in which PFC would provide a Meal or Rest Period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the Regular Rate of Pay.
- PFC violated Labor Code section 226(a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. PFC does not explain how its system describes “time worked” on the Wage Statement itself. As such, Mr. Harris cannot “readily ascertain” what these figures mean. This is because PFC is apparently using a time-calculating system other than “minutes,” but without explanation to the employees within the wage statement. As minutes are measured on a scale of 1 through 60, it is not apparent what these figures (*i.e.* “.63”) are meant to represent. (Please see **Exhibit B**). Without an explanation for how these figures were arrived at, employees cannot “readily ascertain” their total hours worked. Therefore, PFC failed to provide an accurate showing of the “total hours worked” by its employees pursuant to section 226(a)(2), due to all the aforesaid reasons.

Failure to Provide Compliant Expense Reimbursement Payments

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

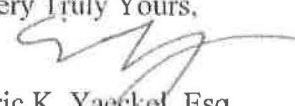
Willful Failure to Provide All Compensation to Ex-Employees

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

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

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

Very Truly Yours,


Eric K. Yaeckel, Esq.

cc: *Via Certified U.S. Mail*

CT CORPORATION SYSTEM

Agent for service of process for

POCINO FOODS COMPANY

330 N Brand Blvd

Glendale, CA 91203

Exhibit A

Pocino Foods Company [47755]
Sara Mejia



Employee Time Card

Go < > Harris, Warren [1390] Select Filter ☐ Include Inactive Employees

+ Add Punch (/WebTime/timecard/Punches/Add?Date=08%2F08%2F2022&UserId=1139)

+ Add Pay Type Transaction (/WebTime/timecard/PayTypeTransactions/Add?Date=08%2F08%2F2022&UserId=1139)

✉ Send a Message (/WebTime/timecard/Messages/Add?userId=1139)

⬇ Save (/WebTime/timecard/Timecards/Edit?userId=1139) Time Card Corrections ⬅ Discard Changes (/WebTime/timecard/Timecards/Edit?userId=1139)

⬇ Download PDF (/WebTime/timecard/Timecards/DownloadOptions?userId=1139)

🔍 Audit Trail (/WebTime/timecard/Timecards/AuditTrail?userId=1139&startDate=08%2F08%2F2022&endDate=08%2F14%2F2022) Preferences ▾

08/08/2022-08/14/2022 Harris, Warren [1390] [1390] How To Edit Time Cards

☐	Date	Pay Type	Amount	In	Out	In	Out	Reg	OT1	OT2	Unpaid Est	Meal Preme	App Meal Preme	EE
	Mon 08/08/2022			08:16 PM	01:02 AM L	01:32 AM L	05:00 AM	8.00 hrs	0.23 hrs	0.00 hrs	0.60 hrs	0.00 hrs	0.00 hrs	
	Tue 08/09/2022			08:10 PM	12:28 AM L	12:58 AM L	05:02 AM	8.00 hrs	0.37 hrs	0.00 hrs	0.50 hrs	0.00 hrs	0.00 hrs	
	Wed 08/10/2022			08:08 PM	01:03 AM L	01:33 AM L	05:01 AM	8.00 hrs	0.37 hrs	0.00 hrs	0.50 hrs	0.00 hrs	0.00 hrs	
	Thu 08/11/2022	Late Meal	0 hrs					8.00 hrs	2.00 hrs	0.00 hrs	0.50 hrs	0.00 hrs	0.00 hrs	
				05:44 PM	10:49 PM L	11:19 PM L	05:02 AM							
	Fri 08/12/2022			06:10 PM	10:47 PM L	11:17 PM L	05:00 AM	8.00 hrs	2.33 hrs	0.00 hrs	0.50 hrs	0.00 hrs	0.00 hrs	
	Sat 08/13/2022			04:49 PM	09:46 PM L	10:16 PM L	05:18 AM	0.00 hrs	11.98 hrs	0.00 hrs	0.50 hrs	0.00 hrs	0.00 hrs	
	Sun 08/14/2022							0.00 hrs	0.00 hrs	0.00 hrs	0.00 hrs	0.00 hrs	0.00 hrs	

Totals Benefit Balances (/WebTime/timecard/BenefitBalances/_Details?userId=1139)

Adjustments (/WebTime/timecard/PayAdjustments/List?userId=1139&startDate=08/08/2022&endDate=08/14/2022)

Schedule (/WebTime/timecard/Schedules/_Details?userId=1139&startDate=08/08/2022&endDate=08/14/2022)

Meal Premiums (/WebTime/timecard/MealPremiums/_Details?userId=1139&startDate=08/08/2022&endDate=08/14/2022)

Attendance Points (/WebTime/timecard/AttendancePoints/_Details?userId=1139&startDate=08/08/2022&endDate=08/14/2022)

Totals for 08/08/2022-08/14/2022

Totals by Pay Type

All	Regular	OT1	OT2	Lunch	Break	Unpaid	Estimated Meal Premium	Approved Meal Premium
58.08 hrs	40.00 hrs	18.08 hrs	0.00 hrs	3.00 hrs	0.00 hrs	3.00 hrs	0.00 hrs	0.00 hrs

Pay Type	Hours
Late Meal	0 hrs
Lunch	3 hrs
Work	58.08 hrs

Pocino Foods Company
14250 Lomitas Ave
City of Industry, CA 91746

Direct Deposit Advice



Check Date
August 19, 2022

Voucher Number
18190

DIRECT DEPOSIT VOUCHER				Direct Deposits	Type	Amount
				WESCOM CREDIT UNION	C	1,179.97
47755	240000	1390 18190 29271	47755	Total Direct Deposits		1,179.97
Warren A Harris						
438 E. 16th St.						
Long Beach, CA 90813						

Non Negotiable - This is not a check - Non Negotiable

Pocino Foods Company

Warren A Harris

Employee ID 1390
Location 240000
Hourly \$20.05

Fed Taxable Income 1,491.18
Fed Filing Status H
State Filing Status H-2

Check Date August 19, 2022
Period Beginning August 8, 2022
Period Ending August 14, 2022

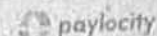
Earnings Statement

Voucher Number 18190
Net Pay 1,179.97

Earnings	Rate	Hours	Amount	YTD	Deductions	Amount	YTD	
Doubletime				5.41	California Savers	90.81	2,324.97	
Holiday				532.80	DENTAL HMO EE	2.03	67.13	
Overtime	33.83	18.08	611.56	9,749.24	MEDICAL 1 - EE	18.83	357.77	
Regular	22.55	40.00	902.00	27,980.64	MEDICAL 3 - EE		299.60	
Sick - Hou				180.40	VISION EE	1.52	50.16	
Vacation				301.00	Deductions	113.19	3,092.63	
Gross Earnings		58.08	1,513.56	38,749.49				
					Direct Deposits	Type	Amount	
					WESCOM CREDIT UNION	C	1,179.97	
					Total Direct Deposits		1,179.97	
					Taxes Withholding	Amount	YTD	
					CA	34.00	561.45	
					CASDI-E	16.40	417.69	
					FITW	55.93	683.06	
					MED	21.62	550.64	
					SS	92.45	2,354.45	
					Taxes	220.40	4,567.29	
					Time Off	Available	Used	Accrued
					SICK	32.00	8.00	
					VACATIO	49.52	14.00	1.54

Exhibit B

THE FACE OF THIS CHECK HAS A COLORED BACKGROUND ON WHITE PAPER. THE BACK A UNIQUE CHECK IDENTITY BAR CODE AND A WATERMARK - HOLD AT AN ANGLE TO VIEW.



Pocino Foods Company
14250 Lomitas Ave
City of Industry, CA 91746

Direct Deposit Advice

Check Date
January 13, 2023

Voucher Number
20464

DIRECT DEPOSIT VOUCHER

42755 240000 1390 20464 32805
Warren A Harris
438 E. 16th St.
Long Beach, CA 90803

42755

Direct Deposits	Type	Amount
WESCOM CREDIT UNION	C	754.05
Total Direct Deposits		754.05

Non Negotiable - This is not a check - Non Negotiable

Pocino Foods Company

Earnings Statement

Warren A Harris

Employee ID: 1390 Fed Taxable Income: 900.93
Location: 240000 Fed Filing Status: H
Hourly: \$20.05 State Filing Status: H-1

Check Date: January 13, 2023
Period Beginning: January 2, 2023
Period Ending: January 8, 2023

Voucher Number: 20464
Net Pay: 754.05

Earnings	Rate	Hours	Amount	YTD
Holiday	22.55	8.00	180.40	360.80
Overtime	33.83	0.63	21.31	55.81
Regular	20.05	33.00	721.65	1,424.21
Gross Earnings		40.63	923.31	1,841.32

Deductions	Amount	YTD
California Savers	64.63	119.71
DENTAL HMO (R)	2.03	4.06
MPHICAL J - BE	18.83	37.56
VISION EE	1.52	3.04
Deductions	87.01	164.37

Direct Deposits	Type	Amount
WESCOM CREDIT UNION	C	754.05
Total Direct Deposits		754.05

Taxes Withholding	Amount	YTD
CA	5.22	10.32
CASDI-E	8.11	16.17
FTW	0.00	0.00
MED	13.36	26.05
SS	55.86	111.39
Taxes	72.55	163.93

Time Off	Available	Used	Accrued
2022 CA	40.00	0.00	
2022 CA	40.00	0.00	
SICK	10.00	50.00	
VACATION	73.86	0.00	1.54