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7 Attorneys for Plaintiff(s),

8 RAHIM AVILA, and all others similarly situated

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN DIEGO**

11 **(UNLIMITED JURISDICTION)**

12 RAHIM AVILA, on behalf of himself, and all
13 others similarly situated and the general public,
14 and as an “aggrieved employee” on behalf of
15 other “aggrieved employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18
19 CAVA MEZZE GRILL, LLC, a Maryland
20 limited liability company; and DOES 1–50,
inclusive,

21 *Defendant(s).*

ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

4/27/2026 5:08:15 PM

Clerk of the Superior Court

By J. Tinajero , Deputy Clerk

Case No. 26CU016601C

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
8. Civil Penalties (Lab. Code §§ 2698, *et seq.*).

JURY TRIAL DEMANDED



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1 Plaintiff, Rahim Avila (hereafter “Plaintiff” or “Avila”), on behalf of himself and all
2 others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved
3 employees” and the State of California under the Labor Code Private Attorneys General Act of
4 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class action for alleged violations of the California Labor
7 Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”), and the
8 California Business and Professions Code against Defendants Cava Mezze Grill, LLC, a
9 Maryland limited liability company, and Does 1 through 50, inclusive (collectively
10 “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
12 him and other similarly situated workers for unpaid wages, statutory penalties, civil penalties,
13 interest, and related relief. These claims are based on Defendants’ failures to:

14 (A) Pay all wages, including minimum, regular, overtime and doubletime
15 wages, earned for all hours worked at the correct rates of pay;

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

18 (D) Pay premium wages for unprovided meal periods;

19 (E) Pay premium wages for unprovided rest breaks;

20 (F) Indemnify for necessary work-related expenditures;

21 (G) Issue only accurate and complete itemized wage statements; and

22 (H) Timely pay wages upon termination of employment

23 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
24 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
25 action.

26 **II. THE PARTIES**

27 3. Plaintiff RAHIM AVILA is a resident of California.

28 4. Defendant CAVA MEZZE GRILL, LLC is a limited liability company organized



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1 and existing under the laws of Maryland, headquartered in the District of Columbia, and also a
2 citizen of and doing business in California based on Plaintiff's information and belief.

3 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
4 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
5 is informed and believes and thereon alleges that said Defendants are legally responsible for the
6 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
7 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
8 when ascertained.

9 6. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
11 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
12 within the course and scope of such agency, employment, direction and control, and with the
13 approval and ratification of each of the other Defendants.

14 7. At all relevant times, in perpetrating the acts and omissions alleged herein,
15 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
16 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
17 Members or otherwise complying with their rights in accordance with applicable California labor
18 laws as alleged herein.

19 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
21 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
22 described class in accordance with applicable laws as alleged herein.

23 III. CLASS ALLEGATIONS

24 9. This action has been brought and may be maintained as a class action pursuant to
25 California Code of Civil Procedure section 382 because there is a well-defined community of
26 interest among the persons who comprise the readily ascertainable class defined below and
27 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
28 a class action.



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1 10. **Class Definition:** The Class is defined as follows: All persons Defendants
2 employed in California hourly, non-exempt employees, including guest experience managers,
3 shift managers, customer service workers, grill cooks, culinary leads, prep workers, restaurant
4 team members, individuals performing work comparable to the aforementioned, compensated
5 comparably to the aforementioned, and individuals in similar positions at any time during the
6 period beginning four years prior to the filing of this action and ending on the date that final
7 judgment is entered in this action (“Class” or “Class Members”).

8 11. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
9 right to amend or modify the class definition with greater specificity, by further division into
10 subclasses and/or by limitation to particular issues.

11 12. **Numerosity:** The Class Members are so numerous that the individual joinder of
12 each individual Class Member is impractical. While Plaintiff does not currently know the exact
13 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
14 minimum required for numerosity under California laws.

15 13. **Commonality and Predominance:** Common questions of law and fact exist as to
16 all Class Members and predominate over any questions which affect only individual Class
17 Members. These questions include, but are not limited to:

18 A. Whether Defendants failed to pay all wages earned to Class Members for
19 all hours worked at the correct rates of pay, including minimum, regular, overtime, doubletime,
20 meal period premium, and rest period premium wages;

21 B. Whether Defendants failed to provide the Class Members with all meal
22 periods in compliance with California law;

23 C. Whether Defendants failed to authorize and permit the Class Members to
24 take all rest periods in compliance with California law;

25 D. Whether Defendants failed to indemnify the Class Members for the
26 reasonable expenses they incurred during the course of performing their duties;

27 E. Whether Defendants knowingly and intentionally failed to provide the
28 class with accurate and complete itemized wage statements;



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1 F. Whether Defendants willfully failed to provide the class with timely final
2 wages;

3 G. Whether Defendants engaged in unfair competition within the meaning of
4 Business and Professions Code sections 17200, et seq., with respect to the Class; and

5 H. Whether Class Members are entitled to restitution of money or property
6 that Defendants may have acquired from them through alleged Labor Code violations.

7 14. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
8 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
9 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
10 Code, the Wage Order, and the Business and Professions Code.

11 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
12 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
13 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
14 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
15 Members.

16 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
17 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
18 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
19 Plaintiff and absent Class Members.

20 17. **Superiority:** A class action is vastly superior to other available means for fair and
21 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
22 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
23 and efficiently prosecute their common claims in a single forum without the unnecessary
24 duplication of effort and expense that numerous individual actions would entail. In addition, the
25 monetary amounts due to many individual Class Members are likely to be relatively small and
26 would thus make it difficult, if not impossible, for individual Class Members to both seek and
27 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
28 Members to effectively pursue the recovery of monies owed to them. Further, a class action will



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1 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

2 **IV. STATEMENT OF FACTS**

3 18. The Wage Order applies to “all persons employed in the public housekeeping
4 industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The
5 Wage Order defines “Public Housekeeping Industry” to mean

6 any industry, business, or establishment which provides meals, housing, or
7 maintenance services whether operated as a primary business or when incidental
8 to other operations in an establishment not covered by an industry order of the
Commission, and includes, but is not limited to the following:

- 9 (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters,
10 cafeterias, boarding houses, clubs, and all similar establishments where
11 food is either sold or liquid form is prepared and served to be consumed
on the premises;
- 12 (2) Catering, banquet, box lunch service, and similar establishments which
13 prepare food for consumption on or off the premises;
- 14 (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer
15 parks, office or loft buildings, and similar establishments offering rental
16 of living, business, or commercial quarters;
- 17 (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions,
18 homes for the aged, and similar establishments offering board or lodging
in addition to medical, surgical, nursing, convalescent, aged, or child care;
- 19 (5) Private schools, colleges, or universities, and similar establishments which
20 provide board or lodging in addition to educational facilities;
- 21 (6) Establishments contracting for development, maintenance or cleaning of
22 grounds; maintenance or cleaning of facilities and/or quarters of
commercial units and living units; and
- 23 (7) Establishments providing veterinary or other animal care services.

24
25 Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants,
26 Avila, and all of the Class Members were covered by the Wage Order because the Defendants
27 operated, and Avila, and all of the Class Members, worked for one or more restaurants.
28 Accordingly, Avila and all of the other Class Members are entitled to the protections the Wage



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1 Order provides.

2 19. On approximately December 22, 2022, the Defendants began to employ Avila in
3 La Jolla, California, in the position of hourly, non-exempt Grill Cook; Avila left his position on
4 May 4, 2023. The Defendants rehired Avila on September 30, 2023, in the position of hourly,
5 non-exempt Grill Cook, promoting Avila to Culinary Lead on February 26, 2024, then to Guest
6 Experience Manager on December 2, 2024. The Defendants continuously employed him in that
7 capacity until on or about October 12, 2025, when his employment ended. Prior to his termination
8 by Defendants, Avila made multiple reports of violations of the California Labor Code to
9 Defendants' senior managers. Avila concurrently reported sexual harassment by manager Wade
10 Powers to Defendants' upper management. Avila's reports regarding both Defendants' Labor
11 Code violations and manager Wade Powers' sexual harassment were often made concurrently
12 with other Class Members' own Labor Code claims and reports of sexual harassment by Powers.
13 Defendants declined to address or escalate either the Labor Code violations or the sexual
14 harassment reported by Avila or any of the other Class Members. Instead, the Defendants
15 allegedly retaliated by cutting Avila's hours and threatening to write up and even terminate Avila.
16 Avila then reported the harassment and retaliatory adverse employment actions to Defendants'
17 Human Resources ("HR" or "People + Culture") directors. Defendants' HR directors failed to
18 investigate Avila's claims, despite his diligent follow up, and responded by taking further
19 retaliatory adverse employment against Avila. Defendants' actions culminated in their
20 termination of Avila's employment.

21 20. In addition to the claims and causes of action listed herein, Avila will file a
22 complaint with the California Civil Rights Department against Defendants and manager Wade
23 Powers for sexual harassment, failure to prevent harassment, retaliation, wrongful termination in
24 violation of public policy, and other related claims. Avila will also file a notice with the California
25 Labor and Workforce Development Agency for retaliation and wrongful termination on the part
26 of Defendants.

27 21. At all relevant times, the Defendants issued wages to Avila and all of the other
28 Class Members on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant



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1 times, the Defendants classified Avila and all of the other Class Members as non-exempt
2 employees entitled to the protections of the Labor Code and the Wage Order.

3 22. At all relevant times, the Defendants failed to compensate Avila and all of the
4 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
5 Defendants regularly failed to pay Avila and the Class Members minimum and regular wages, in
6 several ways, as a direct result of the Defendants' policy and/or practice of systematic
7 understaffing. Each instance of the Defendants' failure to pay Avila and the other Class Members
8 wages at the applicable rates for hours worked was in significant part a result of the Defendants
9 understaffing, cutting hours of existing staff, and terminating employees as a result of Avila's and
10 the Class Members' complaints regarding California Labor Code violations. This policy of the
11 Defendants left Avila and the other Class Members without sufficient "cover" to take off-duty
12 meal and rest breaks, complete opening and closing cleaning and prep duties while "off the clock,"
13 and undertake travel/errands on behalf of the Defendants while off the clock.

14 23. Avila and the Class Members repeatedly requested that the Defendants increase
15 their hours, increase the number of employees per shift, and hire additional employees and in-
16 store managers to improve cover; the Defendants refused. Nonetheless, the Defendants expected
17 Avila and the Class Members to accomplish these tasks within their scheduled shifts while
18 servicing high-volume store locations without pause. To that end, the Defendants communicated
19 to Avila and the Class Members a clear policy of disciplinary and adverse employment actions
20 for acts such as incurring meal period premium wages and overtime wages, which the Defendants
21 treated as infractions. As described below, Avila and the Class Members therefore frequently
22 worked while "off the clock," a practice of which the Defendants were aware.

23 24. The Defendants required Avila and the Class Members to travel between store
24 locations and run business-related errands before "clocking in" and after "clocking out" at the
25 employees' main store location. The Defendants told Avila and the Class Members that the
26 Defendants' managing agents would either clock them in once Avila and the Class Members
27 began travel or errands on behalf of Defendants, or that the Defendants would adjust employee
28 time sheets to reflect the time worked. However, the Defendants often incorrectly recorded or did



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1 not track and compensate these hours, failing to pay Avila and the Class Members even minimum
2 wages for such regular, overtime, and/or doubletime hours worked in this manner.

3 25. The Defendants also instructed Avila and the Class Members to clock out for 30-
4 minute, off duty meal periods, which the Defendants then deducted from employee timesheets
5 and wage statements. The Defendants often specifically directed Avila and the Class Members to
6 clock out for meal periods prior to their fifth hour worked to maintain the appearance of
7 compliance with the requirements of the California Labor Code. However, Avila and the Class
8 Members either did not receive meal breaks at all, remained on duty for purported meal periods,
9 or had their meal periods interrupted by coworkers carrying out their work duties as instructed by
10 the Defendants. The Defendants did not subsequently compensate Avila and the Class Members
11 at minimum or regular rates for this time worked.

12 26. Furthermore, the Defendants implemented a timekeeping system that
13 automatically clocked out Avila and the Class Members at 1 a.m., regardless of the time at which
14 Avila and the other Class Members completed their assigned closing tasks. The Defendants then
15 adjusted the time records of Avila and the Class Members after the fact. The Defendants did so
16 by splitting Avila and the Class Members' time worked into 30-minute increment adjustments
17 per shift worked. The Defendants kept inaccurate records of these hours and provided Avila and
18 the Class Members little transparency into the system of time verification and compensation. This
19 system often resulted in the Defendants underpaying Avila and the Class Members or triggering,
20 then not paying, meal period premiums. Avila and the Class Members were then disciplined by
21 Defendants for triggering meal period premiums which they did not receive.

22 27. In each of these ways, the Defendants failed to pay Avila and the Class Members
23 minimum and regular wages owed.

24 28. At all relevant times, the Defendants failed to compensate Avila and all of the
25 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
26 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
27 utilized a timekeeping system which automatically clocked out Avila and the Class Members at
28 1 a.m., regardless of the time at which they completed all closing shift tasks. This fraudulent time



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1 record, as well as the subsequent time worked by Avila and the Class Members, often occurred
2 after the eighth hour worked in one shift by Avila and the Class Members. However, as a result
3 of inaccurate recording and verification of time worked, the Defendants often failed to
4 compensate Avila and the Class Members at the correct rate of time and one half for all overtime
5 hours worked in this manner.

6 29. The Defendants also failed to pay Avila and the Class Members overtime wages
7 for closing tasks, errands, and/or travel performed while clocked out by Avila and the Class
8 Members after the eighth hour worked. The Defendants assigned Avila and the Class Members
9 more work that could reasonably be completed within eight hours, then penalized employees for
10 working overtime. Avila and the Class Members therefore clocked out to perform such work. The
11 Defendants were aware of this practice, and nonetheless failed to compensate Avila and the Class
12 Members for such overtime hours worked while clocked out at the correct overtime rate.

13 30. At all relevant times, the Defendants failed to compensate Avila and all of the
14 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over
15 the first eight of the seventh day of the workweek.

16 31. At all relevant times, the Defendants failed to provide Avila and all of the other
17 Class Members with all timely 30-minute, off-duty meal periods. The Defendants' practice and
18 policy of systematic understaffing prevented Avila and the Class Members from receiving 30-
19 minute off duty meal periods. The Defendants fraudulently instructed Avila and the Class
20 Members to clock out for an unpaid 30-minute meal period before the fifth hour of work, but did
21 not provide sufficient cover for Avila and the other Class Members to take such meal breaks off
22 duty, uninterrupted, or at all. At times, Avila and the Class Members simply did not clock out
23 when prevented from taking their mandated meal breaks due to the volume of business and severe
24 understaffing. On these occasions, the Defendants disciplined and reprimanded Avila and the
25 Class Members for earning meal period premium wages, which the Defendants referred to as meal
26 "penalties." However, the Defendants also disciplined and reprimanded Avila and the other Class
27 Members for taking off duty meal breaks, or extending their shifts beyond five hours, during high
28 volume business hours (at all times) with insufficient cover for employees to provide



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1 uninterrupted service and take meal breaks. As a result of such policies, Avila and the Class
2 Members regularly and with the Defendants' knowledge clocked out for 30-minute unpaid meal
3 periods, which Avila and the Class Members did not receive and for which the Defendants did
4 not compensate them.

5 32. The Defendants attempted to circumvent the meal period requirements of the
6 Labor Code and the Wage Order by offering Avila and the Class Members hour-long meal periods
7 after the fifth or tenth hour of work, which Avila and the other Class Members were still unable
8 to take off duty or uninterrupted. In the foregoing ways, the Defendants failed to provide Avila
9 and the Class Members with 30-minute off duty meal periods as required. The Defendants also
10 failed to pay premium wages for days on which they failed to provide Avila and all of the other
11 Class Members with meal periods as required by law.

12 33. At all relevant times, the Defendants failed to authorize and permit Avila and all
13 of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
14 or major portion thereof. The Defendants' practice and policy of systematic understaffing
15 prevented Avila and the Class Members from receiving 10-minute off duty. The Defendants
16 fraudulently instructed Avila and the Class Members to clock out for unpaid 10-minute rest
17 breaks, but did not provide sufficient cover for Avila and the other Class Members to take such
18 rest breaks at all. At times, Avila and the Class Members simply did not clock out when prevented
19 from taking rest breaks due to the volume of business and severe understaffing. On these
20 occasions, the Defendants disciplined and reprimanded Avila and the Class Members for earning
21 rest break premium wages. However, the Defendants also disciplined and reprimanded Avila and
22 the other Class Members for taking rest breaks during high volume business hours (at all times)
23 with insufficient cover for employees to provide uninterrupted service. As a result of such
24 policies, Avila and the Class Members regularly and with the Defendants' knowledge clocked out
25 for 10-minute unpaid rest breaks, which Avila and the Class Members did not receive and for
26 which the Defendants did not compensate them. The Defendants also failed to pay premium
27 wages for days on which they failed to authorize and permit Avila and all of the other Class
28 Members to take rest breaks as required by law.



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1 34. At all relevant times, the Defendants required Avila and all of the other Class
2 Members to incur certain business expenses in the course of performing their duties. The
3 Defendants required Avila and all of the other Class Members to supply mobile phones, telecom,
4 and transportation between work sites to perform their job duties. However, the Defendants did
5 not provide these items and did not reimburse Avila and the other Class Members for these items.
6 The Defendants required Avila and the Class Members to take work-related calls and respond to
7 work-related messages using personal mobile phones at all times. However, the Defendants did
8 not reimburse Avila or the other Class Members for the purchase and use of personal cell phones
9 or associated telecom and cellular services. The Defendants further required Avila and the other
10 Class Members to travel between work sites and run errands on behalf of Defendants, including
11 transportation of Defendants' food supplies and products, using personal vehicles. The
12 Defendants did not reimburse Avila and the other Class Members for mileage, wear and tear,
13 insurance, and associated costs while using personal vehicles either at the IRS Standard Mileage
14 Reimbursement Rates or for actual costs.

15 35. At all relevant times, the Defendants failed to issue to Avila and all of the other
16 Class Members complete and accurate wage statements that state all hours worked at the correct
17 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
18 the wage statements they issued to Avila and all of the other Class Members the unpaid wages
19 discussed above. The wage statements fail to state all minimum wages earned, all regular wages
20 earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages
21 earned, all rest break premium wages earned, gross wages earned, net wages earned, all hours
22 work at each rate of pay, and related information.

23 36. At all relevant times, the Defendants also failed to timely pay Avila and all of the
24 other Class Members all earned wages as described above during and at the conclusion of
25 employment.

26 37. At all relevant times, the Defendants failed to maintain accurate employee records
27 of Avila and all of the other Class Members.

28 38. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'



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1 unlawful practices and policies, Plaintiff and the Class Members were:

- 2 A. Not provided with all off-duty meal periods;
- 3 B. Not authorized and permitted to take all rest break periods;
- 4 C. Not paid one hour's pay for each workday in which Defendants failed to
- 5 authorize and permit them to take one or more timely rest periods;
- 6 D. Not paid one hour's pay for each workday in which Defendants failed to
- 7 provide them with one or more timely meal periods;
- 8 E. Not paid all wages earned, including, but not limited to, minimum, regular,
- 9 overtime, and doubletime wages for work performed while clocked out;
- 10 F. Not indemnified for all necessary business expenditures incurred during
- 11 the discharge of their duties;
- 12 G. Not provided with accurate and complete wage statements; and
- 13 H. Not timely paid all earned and unpaid wages at the time their employment
- 14 ended.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE**
17 **CORRECT RATES**

18 **Lab. Code §§ 510, 1194, 1197, and 1198**

19 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

20 39. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 40. At all relevant times, Plaintiff and the Class Members have been non-exempt
22 employees entitled to the protections of both the Labor Code and the Wage Order.

23 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
24 **THE CORRECT RATES OF PAY**

25 41. Section 2 of the Wage Order defines "hours worked" as "the time during which an
26 employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so."

28 42. Section 3 of the Wage Order states:



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(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

43. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

44. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the



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1 first eight hours worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the regular rate of
3 pay for an employee. Any work in excess of 12 hours in one day shall be
4 compensated at the rate of no less than twice the regular rate of pay for an
5 employee. In addition, any work in excess of eight hours on any seventh day of a
6 workweek shall be compensated at the rate of no less than twice the regular rate of
7 pay of an employee. Nothing in this section requires an employer to combine more
8 than one rate of overtime compensation in order to calculate the amount to be paid
9 to an employee for any hour of overtime work.

10 45. Labor Code section 1194 invalidates any agreement between an employer and an
11 employee to work for less than the minimum wage required under the applicable Wage Order.

12 46. Labor Code section 1197 makes it unlawful for an employer to pay an employee
13 less than the minimum wage required under the applicable Wage Order for all hours worked
14 during a payroll period.

15 47. Labor Code section 1198 makes it unlawful for an employer to employ an
16 employee under conditions that violate the Wage Order.

17 48. In conjunction, these provisions of the Labor Code require employers to pay non-
18 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
19 worked, including unrecorded hours when the employer knew or reasonably should have known
20 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
21 Cal.4th 575, 585.)

22 49. At all relevant times during the applicable limitations period, Defendants failed to
23 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
24 minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and
25 doubletime hours, respectively, that they worked at the correct rates of pay.

26 50. At all relevant times, the Defendants failed to compensate Avila and all of the
27 other Class Members for all hours worked at the applicable minimum or regular rates of pay. The
28 Defendants regularly failed to pay Avila and the Class Members minimum and regular wages, in
several ways, as a direct result of the Defendants' policy and/or practice of systematic
understaffing. Each instance of the Defendants' failure to pay Avila and the other Class Members
wages at the applicable rates for hours worked was in significant part a result of the Defendants



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1 understaffing, cutting hours of existing staff, and terminating employees as a result of Avila's and
2 the Class Members' complaints regarding California Labor Code violations. This policy of the
3 Defendants left Avila and the other Class Members without sufficient "cover" to take off-duty
4 meal and rest breaks, complete opening and closing cleaning and prep duties, and undertake
5 travel/errands on behalf of the Defendants.

6 51. Avila and the Class Members repeatedly requested that the Defendants increase
7 their hours, increase the number of employees per shift, and hire additional employees and in-
8 store managers to improve cover; the Defendants refused. Nonetheless, the Defendants expected
9 Avila and the Class Members to accomplish these tasks within their scheduled shifts while
10 servicing high-volume store locations without pause. To that end, the Defendants communicated
11 to Avila and the Class Members a clear policy of disciplinary and adverse employment actions
12 for acts such as incurring meal period premium wages and overtime wages, which the Defendants
13 treated as infractions. As described below, Avila and the Class Members therefore frequently
14 worked while "off the clock," a practice of which the Defendants were aware.

15 52. The Defendants required Avila and the Class Members to travel between store
16 locations and run business-related errands before "clocking in" and after "clocking out" at the
17 employees' main store location. The Defendants told Avila and the Class Members that the
18 Defendants' managing agents would either clock them in once Avila and the Class Members
19 began travel or errands on behalf of Defendants, or that the Defendants would adjust employee
20 time sheets to reflect the time worked. However, the Defendants often incorrectly recorded or did
21 not track and compensate these hours, failing to pay Avila and the Class Members even minimum
22 wages for such regular, overtime, and/or doubletime hours worked in this manner.

23 53. The Defendants also instructed Avila and the Class Members to clock out for 30-
24 minute, off duty meal periods, which the Defendants then deducted from employee timesheets
25 and wage statements. The Defendants often specifically directed Avila and the Class Members to
26 clock out for meal periods prior to their fifth hour worked to maintain the appearance of
27 compliance with the requirements of the California Labor Code. However, Avila and the Class
28 Members either did not receive meal breaks at all, remained on duty for purported meal periods,



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1 or had their meal periods interrupted by coworkers carrying out their work duties as instructed by
2 the Defendants. The Defendants did not subsequently compensate Avila and the Class Members
3 at minimum or regular rates for this time worked.

4 54. Furthermore, the Defendants implemented a timekeeping system that
5 automatically clocked out Avila and the Class Members at 1 a.m., regardless of the time at which
6 Avila and the other Class Members completed their assigned closing tasks. The Defendants then
7 adjusted the time records of Avila and the Class Members after the fact. The Defendants did so
8 by splitting Avila and the Class Members' time worked into 30-minute increment adjustments
9 per shift worked. The Defendants kept inaccurate records of these hours and provided Avila and
10 the Class Members little transparency into the system of time verification and compensation. This
11 system often resulted in the Defendants underpaying Avila and the Class Members or triggering,
12 then not paying, meal period premiums. Avila and the Class Members were then disciplined by
13 Defendants for triggering meal period premiums which they did not receive.

14 55. In each of these ways, the Defendants failed to pay Avila and the Class Members
15 minimum and regular wages owed.

16 56. At all relevant times, the Defendants failed to compensate Avila and all of the
17 other Class Members at the correct rates of pay for all hours worked over eight in a day, over 40
18 in a week, and for the first eight hours of the seventh day of the workweek. The Defendants
19 utilized a timekeeping system which automatically clocked out Avila and the Class Members at
20 1 a.m., regardless of the time at which they completed all closing shift tasks. This fraudulent time
21 record, as well as the subsequent time worked by Avila and the Class Members, often occurred
22 after the eighth hour worked in one shift by Avila and the Class Members. However, as a result
23 of inaccurate recording and verification of time worked, the Defendants often failed to
24 compensate Avila and the Class Members at the correct rate of time and one half for all overtime
25 hours worked in this manner.

26 57. The Defendants also failed to pay Avila and the Class Members overtime wages
27 for closing tasks, errands, and/or travel performed while clocked out by Avila and the Class
28 Members after the eighth hour worked. The Defendants assigned Avila and the Class Members



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1 more work that could reasonably be completed within eight hours, then penalized employees for
2 working overtime. Avila and the Class Members therefore clocked out to perform such work. The
3 Defendants were aware of this practice, and nonetheless failed to compensate Avila and the Class
4 Members for such overtime hours worked while clocked out at the correct overtime rate.

5 58. At all relevant times, the Defendants failed to compensate Avila and all of the
6 other Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over
7 the first eight of the seventh day of the workweek.

8 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
9 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
10 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
11 rates of pay as required by California law.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **Lab. Code §§ 226.7 and 512**

15 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

16 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

17 61. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class Members have been employees of Defendants and entitled to the benefits and protections
19 of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

20 62. In relevant part, California Labor Code § 1198 states:

21 The maximum hours of work and the standard conditions of labor fixed by the
22 commission shall be the maximum hours of work and the standard conditions of
23 labor for employees. The employment of any employee for longer hours than those
24 fixed by the order or under conditions of labor prohibited by the order is unlawful.

25 63. In relevant part, California Labor Code § 512 states:

26 An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with
28 a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the



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1 employer and employee.

2 An employer shall not employ an employee for a work period of
3 more than 10 hours per day without providing the employee with
4 a second meal period of not less than 30 minutes, except that if the
5 total hours worked is no more than 12 hours, the second meal
6 period may be waived by mutual consent of the employer and the
7 employee only if the first meal period was not waived.

64. In relevant part, Section 11 of the Wage Order states:

8 **Meal Periods**

9 (A) No employer shall employ any person for a work period of
10 more than five (5) hours without a meal period of not less
11 than 30 minutes, except that when a work period of not
12 more than six (6) hours will complete the day's work the
13 meal period may be waived by mutual consent of the
14 employee. Unless the employee is relieved of all duty
15 during a 30-minute meal period, the meal period shall be
16 considered an 'on duty' meal period and counted as time
17 worked. An 'on duty' meal period shall be permitted only
18 when the nature of the work prevents an employee from
19 being relieved of all duty and when by written agreement
20 between the parties an on-the-job paid meal period is
21 agreed to. The written agreement shall state that the
22 employee may, in writing, revoke the agreement at any
23 time.

24 (B) If an employer fails to provide an employee a meal period
25 in accordance with the applicable provisions of this Order,
26 the employer shall pay the employee one (1) hour of pay at
27 the employee's regular rate of compensation for each work
28 day that the meal period is not provided.

65. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during
a meal or rest period mandated pursuant to an applicable
statute, or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period



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1 or rest period in accordance with a state law, including, but
2 not limited to, an applicable statute or applicable
3 regulation, standard, or order of the Industrial Welfare
4 Commission, the Occupational Safety and Health
5 Standards Board, or the Division of Occupational Safety
6 and Health, the employer shall pay the employee one
7 additional hour of pay at the employee's regular rate of
8 compensation for each work day that the meal or rest
9 period is not provided.

10 66. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
11 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
12 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
13 to a second 30-minute meal period when they worked more than 10 hours in a workday.

14 67. Defendants intentionally failed to provide Plaintiff and the Class Members with
15 all required 30-minute duty free meal periods in accordance with the Wage Order. Defendants
16 denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first
17 five hours of work. The Defendants' practice and policy of systematic understaffing prevented
18 Avila and the Class Members from receiving 30-minute off duty meal periods. The Defendants
19 fraudulently instructed Avila and the Class Members to clock out for an unpaid 30-minute meal
20 period before the fifth hour of work, but did not provide sufficient cover for Avila and the other
21 Class Members to take such meal breaks off duty, uninterrupted, or at all. At times, Avila and the
22 Class Members simply did not clock out when prevented from taking their mandated meal breaks
23 due to the volume of business and severe understaffing. On these occasions, the Defendants
24 disciplined and reprimanded Avila and the Class Members for earning meal period premium
25 wages, which the Defendants referred to as meal "penalties." However, the Defendants also
26 disciplined and reprimanded Avila and the other Class Members for taking off duty meal breaks,
27 or extending their shifts beyond five hours, during high volume business hours (at all times) with
28 insufficient cover for employees to provide uninterrupted service and take meal breaks. As a result
of such policies, Avila and the Class Members regularly and with the Defendants' knowledge
clocked out for 30-minute unpaid meal periods, which Avila and the Class Members did not
receive and for which the Defendants did not compensate them.



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of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

75. In relevant part, Section 12 of the Wage Order states:

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

76. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

77. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be



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1 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
2 of work, or major fraction thereof.

3 78. Defendants intentionally failed to authorize and permit Plaintiff and the Class
4 Members to take all 10-minute rest periods free from any work duties in accordance with the
5 Wage Order.

6 79. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
7 Class Members to take all timely rest periods. The Defendants' practice and policy of systematic
8 understaffing prevented Avila and the Class Members from receiving 10-minute off duty. The
9 Defendants fraudulently instructed Avila and the Class Members to clock out for unpaid 10-
10 minute rest breaks, but did not provide sufficient cover for Avila and the other Class Members to
11 take such rest breaks at all. At times, Avila and the Class Members simply did not clock out when
12 prevented from taking rest breaks due to the volume of business and severe understaffing. On
13 these occasions, the Defendants disciplined and reprimanded Avila and the Class Members for
14 earning rest break premium wages. However, the Defendants also disciplined and reprimanded
15 Avila and the other Class Members for taking rest breaks during high volume business hours (at
16 all times) with insufficient cover for employees to provide uninterrupted service. As a result of
17 such policies, Avila and the Class Members regularly and with the Defendants' knowledge
18 clocked out for 10-minute unpaid rest breaks, which Avila and the Class Members did not receive
19 and for which the Defendants did not compensate them. Furthermore, Defendants failed to pay
20 premium wages to Plaintiff and the Class Members for days on which they failed to authorize and
21 permit Plaintiff and the other Class Members to take timely rest periods.

22 80. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
23 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
24 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
25 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
26 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
27 to authorize and permit them to take 10-minute rest periods every four hours worked or major
28 fraction thereof.



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1 consequence of the discharge of his or her duties.”

2 88. California Labor Code § 1198 prohibits employers from employing their
3 employees under conditions prohibited by the Wage Order.

4 89. At all relevant times, Defendants required Plaintiff and the Class Members to incur
5 certain business expenses in the course of performing their duties.

6 90. As described above, the Defendants required Avila and all of the other Class
7 Members to incur certain business expenses in the course of performing their duties. The
8 Defendants required Avila and all of the other Class members to supply mobile phones, telecom,
9 and transportation between work sites to perform their job duties. However, the Defendants did
10 not provide these items and did not reimburse Avila and the other Class members for these items.
11 The Defendants required Avila and the Class Members to take work-related calls and respond to
12 work-related messages using personal mobile phones at all times. However, the Defendants did
13 not reimburse Avila or the other Class Members for the purchase and use of personal cell phones
14 or associated telecom and cellular services. The Defendants further required Avila and the other
15 Class Members to travel between work sites and run errands on behalf of Defendants, including
16 transportation of Defendants’ food supplies and products, using personal vehicles. The
17 Defendants did not reimburse Avila and the other Class Members for mileage, wear and tear,
18 insurance, and associated costs while using personal vehicles either at the IRS Standard Mileage
19 Reimbursement Rates or for actual costs.

20 91. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
22 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
23 during the course of performing their duties.

24 ///

25 ///

26 ///

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

3 **Lab. Code § 226**

4 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

5 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
6 **STATEMENTS**

7 92. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

8 93. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
9 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
10 statement showing:

11 A. Gross wages earned;

12 B. Total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of overtime under
14 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

15 C. The number of piece rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis;

17 D. All deductions, provided that all deductions made on written orders of the
18 Employee may be aggregated and shown as one item;

19 E. Net wages earned;

20 F. The inclusive dates of the period for which the employee is paid;

21 G. The name of the employee and his or her social security number, except
22 that by January 1, 2008, only the last four digits of his or her social security number or an
23 employee identification number other than a social security number may be shown on the itemized
24 statement;

25 H. The name and address of the legal entity that is the employer; and

26 I. All applicable hourly rates in effect during the pay period and the
27 corresponding number of hours worked at each hourly rate by the employee.

28 94. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury



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1 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
2 the employer fails to provide accurate and complete information as required by California Labor
3 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
4 alone one or more of the following:

5 A. The amount of the gross wages or net wages paid to the employee during
6 the pay period or any of the other information required to be provided on the itemized wage
7 statement pursuant to California Labor Code § 226(a);

8 B. Which deductions the employer made from gross wages to determine the
9 net wages paid to the employee during the pay period;

10 C. The name and address of the employer and, if the employer is a farm labor
11 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
12 and address of the legal entity that secured the services of the employer during the pay period;

13 D. The name of the employee and only the last four digits of his or her social
14 security number or an employee identification number other than a social security number; and

15 E. The number of piece-rate units earned and the piece rate.

16 95. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
17 means a reasonable person would be able to readily ascertain the information without reference
18 to other documents or information.

19 96. As alleged herein, at all relevant times during the applicable limitations period,
20 Defendants violated California Labor Code section 226 because they did not properly and
21 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
22 the corresponding number of hours worked at each rate by the employee and other requirements
23 of California Labor Code section 226. Defendants failed to state in the wage statements they
24 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
25 including, but not limited to, regular and overtime wages for work they performed off-the-clock
26 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
27 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
28 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class



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1 Members that state all minimum wages earned, all regular wages earned, all overtime wages
2 earned, all doubletime wages earned, all meal period premium wages earned, all rest break
3 premium wages earned, gross wages earned, net wages earned, and all hours work at each rate of
4 pay.

5 97. Defendants' failure to provide Plaintiff and the other Class Members with accurate
6 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
7 the other Class Members with accurate wage statements but intentionally provided wage
8 statements that Defendants knew were not accurate.

9 98. As a result of being provided with inaccurate wage statements by Defendants,
10 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
11 wage statements were violated and they were misled about the amount of wages they had actually
12 earned and were owed. In addition, the absence of accurate information on their wage statements
13 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
14 and mathematical computations to determine the amounts of wages owed, has caused difficulty
15 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
16 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
17 and the other Class Members were not able to ascertain from the wage statements whether
18 Defendants complied with their obligations under California Labor Code section 226(a).

19 **SIXTH CAUSE OF ACTION**

20 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

21 **Lab. Code §§ 201, 202, and 203**

22 **(By Plaintiff, on behalf of himself and the Class, against all Defendants)**

23 99. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 100. At all relevant times during the applicable limitations period, Plaintiffs and the
25 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

27 101. Labor Code § 201 provides that all earned and unpaid wages of an employee who
28 is discharged are due and payable immediately at the time of discharge.



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1 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
2 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
3 gained a competitive advantage over other comparable companies doing business in California
4 that comply with their legal obligations to compensate employees for all earned wages.

5 110. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
6 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
7 Members were deprived of minimum wages, regular wages, overtime wages, doubletime wages,
8 missed meal period premium wages, missed rest period premium wages, phone expenses, telecom
9 expenses, mileage expenses, and comparable money and property.

10 111. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
11 Class Members are entitled to restitution of all monies rightfully belonging to them that
12 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
13 practices.

14 112. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
15 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
16 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **Lab. Code §§ 2698, *et seq.***

20 **(By Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California,**
21 **against all Defendants)**

22 113. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 114. The "Aggrieved Employees" are all members of the Class defined above who
24 Defendants employed during the period beginning February 19, 2025, and ending on the date that
25 final judgment is entered in this action.

26 115. Labor Code § 204 states

27 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
28 or 204.2, earned by any person in any employment are due and payable twice



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1 during each calendar month, on days designated in advance by the employer as the
2 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
3 calendar month shall be paid for between the 16th and the 26th day of the month
4 during which the labor was performed, and labor performed between the 16th and
5 the last day, inclusive, of any calendar month, shall be paid for between the 1st
6 and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages
earned for labor in excess of the normal work period shall be paid no later than the
payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set out
in a subsequently issued paystub shall state the inclusive dates of the pay period
for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those arrangements shall
apply to the covered employees.

(d) 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.

116. Defendants paid wages to employees on regular intervals. Defendants, however,
failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
intervals for all wages earned and all hours worked.

117. During the applicable time period, Defendants violated California Labor Code §§
201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

118. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of themselves and other current or former employees, to bring a civil action to recover civil
penalties pursuant to the procedures specified in California Labor Code § 2699.3.

119. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations
of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198,



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1 and 2802 during the applicable limitations period in the following amounts:

2 A. For violations of California Labor Code § 204, one hundred dollars
3 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
4 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
5 (penalty amounts established by California Labor Code § 210).

6 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
7 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
8 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
9 California Labor Code § 226.3). Alternatively, one hundred dollars (\$100) for each aggrieved
10 employee per pay period; Alternatively, twenty-five dollars (\$25) for each aggrieved employee
11 per pay period if the employee could promptly and easily determine from the wage statement
12 alone the accurate information specified by subdivision (a) of Section 226; and Alternatively,
13 fifty dollars (\$50) for each aggrieved employee per pay period if the alleged violation resulted
14 from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days
15 or four consecutive pay periods.

16 C. For violations of California Labor Code § 510, fifty dollars (\$50.00) for
17 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
18 Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established
19 by California Labor Code § 558).

20 D. For violations of California Labor Code § 512, fifty dollars (\$50.00) for
21 each aggrieved employee for each initial violation for pay period for which the employee was
22 underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period
23 for which the employee was underpaid (penalty amounts established by California Labor Code
24 § 558).

25 E. For violations of California Labor Code § 1174, five hundred dollars
26 (\$500.00) for each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
27 amounts established by Labor Code § 1174.5).

28 F. For violations of California Labor Code § 1197, one hundred dollars



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1 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
2 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
3 (regardless of whether the initial violations were intentionally committed) (penalty amounts
4 established by California Labor Code § 1197.1).

5 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
6 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
7 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
8 period for each subsequent violation (penalty amounts established by California Labor Code §
9 2699(f)(2)).

10 120. Plaintiff has complied with the procedures for bringing suit specified in California
11 Labor Code § 2699.3. By letter dated February 19, 2026, Plaintiff filed written notice online with
12 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
13 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
14 violated, including the facts and theories to support the alleged violations. A true and correct copy
15 of the notice to the LWDA, dated February 19, 2026, is attached as **Exhibit A**. Plaintiff submitted
16 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
17 response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff anticipates that the
18 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
19 these allegations.

20 121. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
21 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
22 connection with their claims for civil penalties.

23 **V. PRAYER FOR RELIEF**

24 122. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for
25 relief and judgment against Defendants as follows:

26 A. An order that the action be certified as a class action with respect to
27 Plaintiff’s claims for violations of California law;

28 B. An order that Plaintiff be appointed class representative;



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- 1 C. An order that counsel for Plaintiff be appointed class counsel;
2 D. Unpaid wages, including minimum, regular, overtime, doubletime, missed
3 meal period, and missed rest period wages;
4 E. Liquidated damages;
5 F. Statutory penalties, including waiting time penalties;
6 G. Civil penalties;
7 H. Restitution;
8 I. Declaratory relief;
9 J. Actual damages;
10 K. Pre-judgment interest;
11 L. Costs of suit;
12 M. Reasonable attorneys' fees; and
13 N. Such other relief as the Court deems just and proper.

14 **VI. DEMAND FOR JURY TRIAL**

15 Plaintiff, on behalf of himself and all other Class Members, hereby demands a jury trial
16 on all issues so triable.

17 Respectfully submitted,

18
19 THE SPIVAK LAW FIRM

20
21
22 Dated: April 27, 2026

By: 

23 DAVID G. SPIVAK
24 JULIA R. McCOY, Attorneys for
25 Plaintiff(s), RAHIM AVILA, and all
26 others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

February 19, 2026

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Rahim Avila / Cava Mezze Grill, LLC

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Rahim Avila (hereafter “Avila” or “Complainant”) provides notice that Cava Mezze Grill, LLC, a limited liability company, and related entities (collectively “the Cava Employers” or “the Employers”) violated his rights and those of all other individuals the Cava Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including guest experience managers, shift managers, customer service workers, grill cooks, culinary leads, prep workers, restaurant team members,, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of himself and all other Aggrieved Employees, Avila hereby provides this notice to the Labor & Workforce Development Agency and the Cava Employers and their agents and representatives.

At all relevant times, the Cava Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Avila and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

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Statement of Facts

On approximately December 22, 2022, the Cava Employers began to employ Avila in La Jolla, California, in the position of hourly, non-exempt Grill Cook; Avila left his position on May 4, 2023. The Cava Employers rehired Avila on September 30, 2023, in the position of hourly, non-exempt Grill Cook, promoting Avila to Culinary Lead on February 26, 2024, then to Guest Experience Manager on December 2, 2024. The Cava Employers continuously employed him in that capacity until on or about October 12, 2025, when his employment ended. Prior to his termination by the Cava Employers, Avila made multiple reports of violations of the California Labor Code to the Cava Employers' senior managers. Avila concurrently reported sexual harassment by manager Wade Powers to the Cava Employers' upper management. These senior managers declined to address or escalate either the Labor Code violations or the sexual harassment reported by Avila; instead, the Cava Employers senior managers retaliated by cutting Avila's hours and threatening to write up and even terminate Avila. Avila then reported the harassment and retaliation to the Cava Employers' HR representatives. The Cava Employers' HR representatives failed to investigate Avila's claims, despite his diligent follow up, and responded by further retaliating against Avila for these activities. The Cava Employers' retaliation culminated in their termination of Mr. Avila's Employment.

At all relevant times, the Cava Employers issued wages to Avila and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Cava Employers classified Avila and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Cava Employers regularly failed to pay Avila and the Aggrieved Employees minimum and regular wages, in several ways, as a direct result of the Cava Employers' policy and/or practice of systematic understaffing. Each instance of the Cava Employers' failure to pay Avila and the other Aggrieved Employees wages at the applicable rates for hours worked was in significant part a result of the Cava Employers understaffing, cutting hours of existing staff, and terminating employees as a result of Avila's and the Aggrieved Employees' complaints for California Labor Code violations. This policy of the Cava Employers left Avila and the other Aggrieved Employees without sufficient

“cover” to take off-duty meal and rest breaks, complete opening and closing cleaning and prep duties while “off the clock,” and undertake travel/errands on behalf of the Cava Employers while off the clock.

Avila and the Aggrieved Employees repeatedly requested that the Cava Employers increase their hours, increase the number of employees per shift, and hire additional employees and in-store managers to increase the number of employees available to cover coworkers during a shift; the Cava Employers refused. Nonetheless, the Cava Employers expected Avila and the Aggrieved Employees to accomplish these tasks within their scheduled shifts while servicing high-volume Cava store locations without pause. To that end, the Cava Employers communicated to Avila and the Aggrieved Employees a clear policy of applying disciplinary and adverse employment actions for acts such as incurring meal period premium wages and overtime wages, which the Cava Employers treated as infractions. As described herein, Avila and the Aggrieved Employees therefore frequently worked while “off the clock,” a practice of which the Cava Employers were aware.

The Cava Employers required Avila and the Aggrieved Employees to travel between Cava store locations and run business-related errands before “clocking in” and after “clocking out” at the employees’ main store location. The Cava Employers told Avila and the Aggrieved Employees that the Cava Employers’ senior managers would either clock them in once Avila and the Aggrieved Employees began travel or errands on behalf of Cava, or that the Cava Employers would adjust employee time sheets to reflect the time worked. However, the Cava Employers often incorrectly recorded or did not track and compensate these hours, failing to pay Avila and the Aggrieved Employees even minimum wages for such regular, overtime, and/or doubletime hours worked in this manner.

The Cava Employers also instructed Avila and the Aggrieved Employees to clock out for 30-minute, off-duty meal periods, which the Cava Employers then deducted from employee timesheets and wage statements. The Cava Employers often specifically directed Avila and the Aggrieved Employees to clock out for meal periods prior to their fifth hour worked to maintain the appearance of compliance with the requirements of the California Labor Code. However, Avila and the Aggrieved Employees either did not receive meal breaks at all, remained on duty for purported meal periods, or had their meal periods interrupted by coworkers carrying out their work duties as instructed

by the Cava Employers. The Cava Employers did not subsequently compensate Avila and the Aggrieved Employees at minimum or regular rates for this time worked.

Furthermore, the Cava Employers implemented a timekeeping system that automatically clocked out Avila and the Aggrieved Employees at 1 a.m., regardless of the time at which Avila and the other Aggrieved Employees completed their assigned closing tasks. The Cava Employers then adjusted the time records of Avila and the Aggrieved Employees after the fact. The Cava Employers did so by splitting Avila and the Aggrieved Employees' time worked into 30-minute increment adjustments per shift worked. The Cava Employers kept inaccurate records of these hours and provided Avila and the Aggrieved Employees little transparency into the system of time verification and compensation. This system often resulted in the Cava Employers underpaying Avila and the Aggrieved Employees or triggering, then not paying, late meal period premiums. Avila and the Aggrieved Employees were then disciplined by the Cava Employers for triggering meal period premiums which they did not receive.

In each of the above ways, the Cava Employers failed to pay Avila and the Aggrieved Employees minimum and regular wages owed.

The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day, over 40 in a week, and for the first eight hours of the seventh day of the workweek. The Cava Employers utilized a timekeeping system which automatically clocked out Avila and the Aggrieved Employees at 1 a.m., regardless of the time at which they completed all closing shift tasks. This false time record, as well as the subsequent time worked by Avila and the Aggrieved Employees, often occurred after the eighth hour worked in one day by Avila and the Aggrieved Employees. However, as a result of inaccurate recording and verification of time worked, the Cava Employers often failed to compensate Avila and the Aggrieved Employees at the correct rate of time and one half for all overtime hours worked in this manner.

The Cava Employers also failed to pay Avila and the Aggrieved Employees overtime wages for closing tasks, errands, and/or travel completed performed while clocked out by Avila and the Aggrieved Employees after the eighth hour worked. The Cava Employers assigned Avila and the Aggrieved Employees more work that could reasonably be completed within eight hours, then penalized employees for working overtime. Avila and the Aggrieved Employees therefore clocked out to perform such

work because they had no other option. The Cava Employers were aware of this practice, and nonetheless failed to compensate Avila and the Aggrieved Employees for such overtime hours worked while clocked out at the correct overtime rate.

The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over 12 in a day, and all over the first eight of the seventh day of the workweek.

At all relevant times, the Cava Employers failed to provide Avila and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Cava Employers' practice and policy of systematic understaffing prevented Avila and the Aggrieved Employees from receiving 30-minute off-duty meal periods. The Cava Employers falsely instructed Avila and the Aggrieved Employees to clock out for an unpaid 30-minute meal period before the fifth hour of work, but did not provide sufficient cover for Avila and the other Aggrieved Employees to take such meal breaks off duty, uninterrupted, or at all. At times, Avila and the Aggrieved Employees simply did not clock out when prevented from taking their mandated meal breaks due to the volume of business and severe understaffing, and risk of adverse actions. On these occasions, the Cava Employers disciplined and reprimanded Avila and the Aggrieved Employees for earning meal period premium wages, which the Cava Employers referred to as meal "penalties." However, the Cava Employers also disciplined and reprimanded Avila and the other Aggrieved Employees for taking off-duty meal breaks, or extending their shifts beyond five hours, during high volume business hours (at all times) with insufficient cover for employees to provide uninterrupted service and take meal breaks. As a result of such policies, Avila and the Aggrieved Employees regularly and with the Cava Employers' knowledge clocked out for 30-minute unpaid meal periods, which Avila and the Aggrieved Employees did not receive and for which the Cava Employers did not compensate them. The Cava Employers attempted to circumvent the meal period requirements of the Labor Code and the Wage Order by offering Avila and the Aggrieved Employees hour-long meal periods after the fifth or tenth hour of work, which Avila and the other Aggrieved Employees were still unable to take off duty or uninterrupted. In the foregoing ways, the Cava Employers failed to provide Avila and the Aggrieved Employees with 30-minute off-duty meal periods as required. The Cava Employers also failed to pay premium wages for days on which they failed to provide Avila and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Cava Employers failed to authorize and permit Avila and all of the other Aggrieved Employees to take ten-minute, off-duty rest breaks every four hours worked or major portion thereof. The Cava Employers' practice and policy of systematic understaffing prevented Avila and the Aggrieved Employees from receiving 10-minute off duty. The Cava Employers instructed Avila and the Aggrieved Employees to take 10-minute off duty rest breaks and reprimanded them when they did not, but refused to provide sufficient cover for Avila and the other Aggrieved Employees to take off duty breaks. At times, Avila and the Aggrieved Employees simply did not take their rest breaks due to the volume of business and severe understaffing, and risk of adverse actions. On these occasions, the Cava Employers disciplined and reprimanded Avila and the Aggrieved Employees for earning rest break premium wages. However, the Cava Employers also disciplined and reprimanded Avila and the other Aggrieved Employees for actually taking fully off duty rest breaks during high volume business hours (at all times) with insufficient cover for employees to provide uninterrupted service. As a result of such policies, Avila and the Aggrieved Employees regularly and with the Cava Employers' knowledge falsely reported 10-minute rest breaks, breaks which Avila and the Aggrieved Employees did not receive and for which the Cava Employers did not compensate them. The Cava Employers also failed to pay premium wages for days on which they failed to authorize and permit Avila and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Cava Employers required Avila and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Cava Employers required Avila and all of the other Aggrieved Employees to supply mobile phones, telecom, transportation between work sites to perform their job duties. However, the Cava Employers did not provide these items and did not reimburse Avila and the other Aggrieved Employees for these items. The Cava Employers required Avila and the Aggrieved Employees to take work-related calls and respond to work-related messages using personal mobile phones at all times. However, the Cava Employers did not reimburse Avila or the other Aggrieved Employees for the purchase and use of personal cell phones or associated telecom and cellular services. The Cava Employers further required Avila and the other Aggrieved Employees to travel between work sites and run errands on behalf of Cava, including transportation of Cava food supplies and products, using personal vehicles. The Cava Employers did not reimburse Avila and the other Aggrieved Employees for mileage, wear and tear, insurance, and associated costs while using personal vehicles either at the IRS Standard Mileage Reimbursement Rates or for actual costs.

At all relevant times, the Cava Employers failed to issue to Avila and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Cava Employers knowingly and intentionally failed to state on the wage statements they issued to Avila and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, all hours work at each rate of pay, and other required information.

The Cava Employers also failed to timely pay Avila and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Cava Employers failed to maintain accurate employee records of Avila and all of the other Aggrieved Employees.

For the reasons stated herein, Avila alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Cava Employers failed to pay Avila and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, overtime, and doubletime wages;
- (b) The Cava Employers failed to provide Avila and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Cava Employers failed to authorize and permit Avila and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees at one hour's pay for each day in which the Cava Employers failed to provide them with one or more meal periods as required by law;

- (e) The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees at one hour's pay for each day in which the Cava Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Cava Employers failed to indemnify Avila and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Cava Employers knowingly and intentionally failed to provide Avila and all of the other Aggrieved Employees with accurate wage statements;
- (h) The Cava Employers willfully failed to timely pay Avila and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Cava Employers and when their employment ended;
- (i) The Cava Employers failed to maintain accurate employment records pertaining to Avila and all of the other Aggrieved Employees.

Accordingly, Avila now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Cava Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where

food in either solid or liquid form is prepared and served to be consumed on the premises;

- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Cava Employers, Avila, and all of the Aggrieved Employees were covered by the Wage Order because the Cava Employers operated, and Avila, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Avila and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct

Rates of Pay

(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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 relevant part, Labor Code section 1194 states:

- (a) 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 attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in

any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth ($1/40$) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

The Cava Employers regularly failed to pay Avila and the Aggrieved Employees minimum and regular wages, in several ways, as a direct result of the Cava Employers' policy and/or practice of systematic understaffing. Each instance of the Cava Employers' failure to pay Avila and the other Aggrieved Employees wages at the applicable rates for hours worked was in significant part a result of the Cava Employers understaffing, cutting hours of existing staff, and terminating employees as a result of Avila's and the Aggrieved Employees' complaints for California Labor Code violations. This policy of the Cava Employers left Avila and the other Aggrieved Employees without sufficient "cover" to take off-duty meal and rest breaks, complete opening and closing cleaning and prep duties, and undertake travel/errands on behalf of the Cava Employers.

Avila and the Aggrieved Employees repeatedly requested that the Cava Employers increase their hours, increase the number of employees per shift, and hire additional employees and in-store managers to increase the number of employees available to cover coworkers during a shift; the Cava Employers refused. Nonetheless, the Cava Employers expected Avila and the Aggrieved Employees to accomplish these tasks within their scheduled shifts while servicing high-volume Cava store locations without pause. To that end, the Cava Employers communicated to Avila and the Aggrieved Employees a clear policy of disciplinary and adverse employment actions for acts such as incurring meal period premium wages and overtime wages, which the Cava Employers treated as infractions. As described below, Avila and the Aggrieved Employees therefore frequently worked while “off the clock,” a practice of which the Cava Employers were aware.

The Cava Employers required Avila and the Aggrieved Employees to travel between Cava store locations and run business-related errands before “clocking in” and after “clocking out” at the employees’ main store location. The Cava Employers told Avila and the Aggrieved Employees that the Cava Employers’ senior managers would either clock them in once Avila and the Aggrieved Employees began travel or errands on behalf of Cava, or that the Cava Employers would adjust employee time sheets to reflect the time worked. However, the Cava Employers often incorrectly recorded or did not track and compensate these hours, failing to pay Avila and the Aggrieved Employees even minimum wages for such regular, overtime, and/or doubletime hours worked in this manner.

The Cava Employers also instructed Avila and the Aggrieved Employees to clock out for 30-minute, off-duty meal periods, which the Cava Employers then deducted from employee timesheets and wage statements. The Cava Employers often specifically directed Avila and the Aggrieved Employees to clock out for meal periods prior to their fifth hour worked to maintain the appearance of compliance with the requirements of the California Labor Code. However, Avila and the Aggrieved Employees either did not receive meal breaks at all, remained on duty for purported meal periods, or had their meal periods interrupted by coworkers carrying out their work duties as instructed by the Cava Employers. The Cava Employers did not subsequently compensate Avila and the Aggrieved Employees at minimum or regular rates for this time worked.

Furthermore, the Cava Employers implemented a timekeeping system that automatically clocked out Avila and the Aggrieved Employees at 1 a.m., regardless of

the time at which Avila and the other Aggrieved Employees completed their assigned closing tasks. The Cava Employers then adjusted the time records of Avila and the Aggrieved Employees after the fact. The Cava Employers did so by splitting Avila and the Aggrieved Employees' time worked into 30-minute increment adjustments per shift worked. The Cava Employers kept inaccurate records of these hours and provided Avila and the Aggrieved Employees little transparency into the system of time verification and compensation. This system often resulted in the Cava Employers underpaying Avila and the Aggrieved Employees or triggering, then not paying, meal period premiums. Avila and the Aggrieved Employees were then disciplined for triggering meal period premiums which they did not receive.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Cava Employers, Avila and all of the other Aggrieved Employees earned rest period premium wages and meal period premium wages during pay periods in which they worked hours qualifying for overtime and/or double time premium pay rates. However, the Cava Employers failed to pay to Avila and all of the other Aggrieved Employees rest period premium wages and meal period premium wages at overtime and double time premium pay on such rest period premium wages, meal period premium wages, and other non-discretionary compensation.

The subsequent time worked by Avila and the Aggrieved Employees following the automatic 1 a.m. clock out often occurred after the eighth hour worked in one day by Avila and the Aggrieved Employees. However, as a result of inaccurate recording and verification of time worked, the Cava Employers often failed to compensate Avila and the Aggrieved Employees at the correct rate of time and one half for all overtime hours worked in this manner.

The Cava Employers also failed to pay Avila and the Aggrieved Employees overtime wages for closing tasks, errands, and/or travel completed performed while clocked out by Avila and the Aggrieved Employees after the eighth hour worked. The Cava

Employers assigned Avila and the Aggrieved Employees more work that could reasonably be completed within eight hours, then penalized employees for working overtime. Avila and the Aggrieved Employees therefore clocked out to perform such work because they had no other option. The Cava Employers were aware of this practice, and nonetheless failed to compensate Avila and the Aggrieved Employees for such overtime hours worked while clocked out at the correct overtime rate.

At all relevant times during the applicable limitations period, the Cava Employers failed to compensate Avila and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, overtime, and doubletime wages for all hours they worked at the correct rates of pay. Accordingly, Avila now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

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Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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 relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Cava Employers failed to provide Avila and all of the other Aggrieved Employees with all timely meal periods. The Cava Employers denied Avila and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Cava Employers' practice and policy of systematic understaffing prevented Avila and the Aggrieved Employees from receiving 30-minute off-duty meal periods. The Cava Employers falsely instructed Avila and the Aggrieved Employees to clock out for an unpaid 30-minute meal period before the fifth hour of work, but did not provide sufficient cover for Avila and the other Aggrieved Employees to take such meal breaks off duty, uninterrupted, or at all. At times, Avila and the Aggrieved Employees simply did not clock out when prevented from taking their mandated meal breaks due to the volume of business and severe understaffing, and risk of adverse actions. On these occasions, the Cava Employers disciplined and

reprimanded Avila and the Aggrieved Employees for earning meal period premium wages, which the Cava Employers referred to as meal “penalties.” However, the Cava Employers also disciplined and reprimanded Avila and the other Aggrieved Employees for taking off-duty meal breaks, or extending their shifts beyond five hours, during high volume business hours (at all times) with insufficient cover for employees to provide uninterrupted service and take meal breaks. As a result of such policies, Avila and the Aggrieved Employees regularly and with the Cava Employers’ knowledge clocked out for 30-minute unpaid meal periods, which Avila and the Aggrieved Employees did not receive and for which the Cava Employers did not compensate them. The Cava Employers attempted to circumvent the meal period requirements of the Labor Code and the Wage Order by offering Avila and the Aggrieved Employees hour-long meal periods after the fifth or tenth hour of work, which Avila and the other Aggrieved Employees were still unable to take off duty or uninterrupted. In the foregoing ways, the Cava Employers failed to provide Avila and the Aggrieved Employees with 30-minute off-duty meal periods as required. Furthermore, the Cava Employers failed to pay premium wages for days on which they failed to provide Avila and all of the other Aggrieved Employees with timely meal periods. Accordingly, Avila now seeks civil penalties for these Labor Code violations that the Cava Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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 relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Cava Employers failed to authorize and permit Avila and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Cava Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. At all relevant times, the Cava Employers failed to authorize and permit Avila and all of the other Aggrieved Employees to take ten-minute, off-duty rest breaks every four hours worked or major portion thereof. The Cava Employers' practice and policy of systematic understaffing prevented Avila and the Aggrieved Employees from receiving 10-minute off duty. The Cava Employers instructed Avila and the Aggrieved Employees to take 10-minute off duty rest breaks and reprimanded them when they did not, but refused to provide sufficient cover for Avila and the other Aggrieved Employees to take off duty breaks. At times, Avila and the Aggrieved Employees simply did not take their rest breaks due to the volume of business and severe understaffing, and risk of adverse actions. On these occasions, the Cava Employers disciplined and reprimanded Avila and the Aggrieved Employees for earning rest break premium wages. However, the Cava Employers also disciplined and reprimanded Avila and the other Aggrieved Employees for actually taking fully off duty rest breaks during high volume business hours (at all times) with insufficient cover for employees to provide uninterrupted service. As a result of such policies, Avila and the Aggrieved Employees regularly and with the Cava Employers' knowledge falsely reported 10-minute rest

breaks, breaks which Avila and the Aggrieved Employees did not receive and for which the Cava Employers did not compensate them. The Cava Employers also failed to pay premium wages for days on which they failed to authorize and permit Avila and all of the other Aggrieved Employees to take rest breaks as required by law. Accordingly, Avila now seeks civil penalties for these Labor Code violations that the Cava Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Cava Employers required Avila and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Cava Employers required Avila and all of the other Aggrieved Employees to supply mobile phones, telecom, and transportation between work sites to perform their job duties. However, the Cava Employers did not provide these items and did not reimburse Avila and the other Aggrieved Employees for these items. The Cava Employers required Avila and the Aggrieved Employees to take work-related calls and respond to work-related messages using personal mobile phones at all times. However, the Cava Employers did not reimburse Avila or the other Aggrieved Employees for the purchase and use of personal cell phones or associated telecom and cellular services. The Cava Employers further required Avila and the other Aggrieved Employees to travel between work sites and run errands on behalf of Cava, including transportation of Cava food supplies and products, using personal vehicles. The Cava Employers did not reimburse Avila and the other Aggrieved Employees for mileage, wear and tear, insurance, and associated costs while using personal vehicles either at the IRS Standard Mileage Reimbursement Rates or for actual costs. Accordingly, Avila seeks civil penalties for these Labor Code violations that the Cava Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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.

At all relevant times during the applicable limitations period, the Cava Employers violated Labor Code section 226 because they did not properly and accurately itemize

each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Cava Employers failed to state in the wage statements they issued to Avila and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Cava Employers knowingly and intentionally failed to state on the wage statements they issued to Avila and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, all hours work at each rate of pay, and other required information.

Labor Code § 2699(f)(2)(A) states:

- (i) If, at the time of the alleged violation, the person employs one or more employees, and the alleged violation is a violation of paragraphs (1) to (7), inclusive, or paragraph (9) of subdivision (a) of Section 226, the only civil penalty applicable under this part is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226 [failure to state the name and address of the legal entity that is the employer], the civil penalty applicable under this part for the violation is twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer. This subdivision does not apply if the employer has failed to provide an itemized payroll statement during any of the pay periods at issue.
- (ii) The civil penalty is fifty (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

Accordingly, Avila seeks civil penalties for the Labor Code violations that the Cava Employers have committed against Avila and all of the other Aggrieved Employees as follows:

- (1) \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3);
- (2) Alternatively, one hundred dollars (\$100) for each aggrieved employee per pay period;
- (3) Alternatively, twenty-five dollars (\$25) for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226; and
- (4) Alternatively, fifty dollars (\$50) for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break

premium wages, and other compensation, at the intervals stated above. As a result, the Cava Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Avila now seeks civil penalties for the Labor Code violations that the Cava Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Cava Employers failed to pay Avila and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Avila, including minimum wages, regular wages, overtime wages, doubletime wages, unprovided meal period premium wages, unprovided rest break premium wages, and other compensation. By failing to pay Avila and all of the other Aggrieved Employees as set forth above at the end of employment,

the Cava Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Avila seeks civil penalties from the Cava Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with

rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Cava Employers failed to compensate Avila and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all doubletime wages earned, all meal period premium wages earned, all rest break premium wages earned, gross wages earned, net wages earned, all hours work at each rate of pay, and related compensation. As a result, the Cava Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Avila and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Avila seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Rahim Avila will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a

LWDA / The Cava Employers

Re: Rahim Avila

February 19, 2026

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formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

cc: Rahim Avila

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