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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA

ALBERTO ESPINAL HERRERA,  
individually, and on behalf of other  
members of the general public similarly  
situated, and as an aggrieved employee  
pursuant to the Private Attorneys General  
Act ("PAGA"),

Plaintiff,

vs.

LA PINATA OF PITTSBURG  
RESTAURANT INC., a California  
corporation; LA PINATA OF ALAMEDA  
LLC, a California limited liability  
company; LA PINATA OF CONCORD  
RESTAURANT. INC., a California  
corporation; TACOS LA PENCA AZUL  
LLC, a California limited liability  
company; THE GUZMAN  
CORPORATION, a California corporation;  
and DOES 1 through 10, inclusive,

Defendants.

Case No.: C23-02115

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

- (1) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (2) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (4) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations, Title 8, Section 11050 Subdivision 5(A) (Failure to

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

**Jury Trial Demanded**

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

#### 4 JURISDICTION AND VENUE

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

18 2. This Court has jurisdiction over Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action  
23 because there is no complete diversity, and this case falls within the statutory exceptions to  
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).  
25 Upon information and belief, two-thirds or more of the class members and Defendants are  
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens  
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant  
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed  
2 within the past three (3) years on behalf of the same proposed class against Defendants  
3 asserting the same or similar factual allegations.

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

#### 11 **THE PARTIES**

12 4. Plaintiff Alberto Espinal Herrera is a resident of Pittsburg, in Contra Costa  
13 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee  
14 from approximately September 2021 to December 2022. Plaintiff worked as a Busser at  
15 Defendants' La Pinata restaurant located in Pittsburg, California. During his employment,  
16 Plaintiff typically worked six (6) or more hours per day and five (5) or more days per week.  
17 Plaintiff's primary job duties included, without limitation, cleaning and clearing tables,  
18 mopping, sweeping, and taking out trash.

19 5. LA PINATA OF PITTSBURG RESTAURANT INC. was and is, upon  
20 information and belief, a California corporation, and at all times hereinafter mentioned, an  
21 employer whose employees are engaged throughout this county and the State of California.

22 6. LA PINATA OF ALAMEDA LLC was and is, upon information and belief, a  
23 California limited liability company, and at all times hereinafter mentioned, an employer  
24 whose employees are engaged throughout this county and the State of California.

25 7. LA PINATA OF CONCORD RESTAURANT. INC. was and is, upon  
26 information and belief, a California corporation, and at all times hereinafter mentioned, an  
27 employer whose employees are engaged throughout this county and the State of California.

28 8. TACOS LA PENCA AZUL LLC was and is, upon information and belief, a

1 California limited liability company, and at all times hereinafter mentioned, an employer  
2 whose employees are engaged throughout this county and the State of California.

3 9. THE GUZMAN CORPORATION was and is, upon information and belief, a  
4 California corporation, and at all times hereinafter mentioned, an employer whose employees  
5 are engaged throughout this county and the State of California.

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

10 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
11 were the partners, agents, owners, or managers of LA PINATA OF PITTSBURG  
12 RESTAURANT INC.; LA PINATA OF ALAMEDA LLC; LA PINATA OF CONCORD  
13 RESTAURANT. INC.; TACOS LA PENCA AZUL LLC; and THE GUZMAN  
14 CORPORATION at all relevant times.

15 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
16 acts and omissions alleged herein was performed by, or is attributable to, LA PINATA OF  
17 PITTSBURG RESTAURANT INC.; LA PINATA OF ALAMEDA LLC; LA PINATA OF  
18 CONCORD RESTAURANT. INC.; TACOS LA PENCA AZUL LLC; THE GUZMAN  
19 CORPORATION; and/or DOES 1 through 10 (collectively, “Defendants” or “LA PINATA”),  
20 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert  
21 with, each of the other co-Defendants and was acting within the course and scope of such  
22 agency, employment, joint venture, or concerted activity with legal authority to act on the  
23 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the  
24 official policy of Defendants.

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

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

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

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

- 17                   (a)     jointly exercised meaningful control over the work performed by  
18                             Plaintiff and class members;
- 19                   (b)     jointly exercised meaningful control over Plaintiff’s and class members’  
20                             wages, hours, and working conditions, including the quantity, quality  
21                             standards, speed, scheduling, and operative details of the tasks  
22                             performed by Plaintiff and class members;
- 23                   (c)     jointly required that Plaintiff and class members perform work which is  
24                             an integral part of Defendants’ businesses; and
- 25                   (d)     jointly exercised control over Plaintiff and class members as a matter of  
26                             economic reality in that Plaintiff and class members were dependent on  
27                             Defendants, who shared the power to set the wages of Plaintiff and class  
28                             members and determined their working conditions, and who jointly

1 reaped the benefits from the underpayment of their wages and  
2 noncompliance with other statutory provisions governing their  
3 employment.

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

7 18. LA PINATA OF PITTSBURG RESTAURANT INC.; LA PINATA OF  
8 ALAMEDA LLC; LA PINATA OF CONCORD RESTAURANT. INC.; TACOS LA PENCA  
9 AZUL LLC; THE GUZMAN CORPORATION; and DOES 1 through 10 are therefore alter  
10 egos of each other.

11 19. Adherence to the fiction of the separate existence of Defendants would permit  
12 an abuse of the corporate privilege, and would promote injustice by protecting Defendants  
13 from liability for the wrongful acts committed by them under the name LA PINATA.

14 20. Plaintiff further alleges, upon information and belief, that Defendants LA  
15 PINATA OF PITTSBURG RESTAURANT INC.; LA PINATA OF ALAMEDA LLC; LA  
16 PINATA OF CONCORD RESTAURANT. INC.; TACOS LA PENCA AZUL LLC; and THE  
17 GUZMAN CORPORATION; are alter egos of each other for the following reasons:

18 (a) According to La Penca Azul's website<sup>1</sup>, the two La Penca Azul  
19 (Alameda and Bay Farm) locations were formerly La Pinata restaurants  
20 and were founded by Alfonso Guzman and, therefore, on information  
21 and belief, the two restaurant brands maintain the same employment  
22 policies and practices;

23 (b) Similarly, owner/co-owner of La Penca Azul restaurants Octavio  
24 Guzman's LinkedIn profile<sup>2</sup> confirms the two former La Pinata  
25 locations (Alameda and Bay Farm) were converted to La Penca Azul

26 <sup>1</sup> About Us | La Penca Azul, "About Us" <https://www.lapencaazul.com/about-us> (last  
27 accessed Aug. 22, 2023).

28 <sup>2</sup> Octavio Guzman | LinkedIn, <https://www.linkedin.com/in/lapinataoctavioguzman/>  
(last accessed Aug. 24, 2023).

1 restaurants. Octavio Guzman’s profile contains the following press  
2 release: “For the past 25 years Alameda has been home to La Pinata  
3 Mexican Restaurant. Therefore, it is with much delight and anticipation  
4 that we inform you La Pinata is now La Penca Azul. **Ownership**  
5 **remains the same and this change is strictly in name for the**  
6 **Alameda and Bay Farm locations.** Please rest assured that the food,  
7 management, employees and quality of service will remain the same and  
8 unaffected.” (Emphasis added);

9 (c) According to La Pinata Restaurants’ website<sup>3</sup>, LA PINATA OF  
10 PITTSBURG RESTAURANT INC.; LA PINATA OF CONCORD  
11 RESTAURANT. INC.; and THE GUZMAN CORPORATION have  
12 principal addresses that correspond to La Pinata locations named  
13 Pittsburg #7: “95 BLISS AVENUE, PITTSBURG, CA 94565”; Concord  
14 #6: “2301 WILLOW PASS RD, CONCORD, CA 94520”; and San  
15 Leandro #2: “2699 MERCED AVE, SAN LEANDRO, CA 94577”,  
16 respectively, and La Penca Azul’s website<sup>4</sup> indicates that LA PINATA  
17 OF ALAMEDA LLC has a principal address that corresponds to La  
18 Penca Azul’s Alameda location: “1440 PARK STREET, ALAMEDA,  
19 CA 94501”;

20 (d) On the California Secretary of State’s website  
21 (<https://bizfileonline.sos.ca.gov/>), LA PINATA OF CONCORD  
22 RESTAURANT. INC. and THE GUZMAN CORPORATION share the  
23 same agent for service of process, Alfonso Guzman;

24 (e) According to Statement of Information forms filed with the California  
25 Secretary of State, LA PINATA OF CONCORD RESTAURANT. INC.

26  
27 <sup>3</sup> Our Locations | La Piñata Restaurants, “Locations”  
<https://lapinatarestaurants.com/locations> (last accessed Aug. 22, 2023).

28 <sup>4</sup> About Us | La Penca Azul, “About Us” <https://www.lapencaazul.com/about-us> (last  
accessed Aug. 22, 2023).

1 and THE GUZMAN CORPORATION have the same officers including,  
2 but not limited to Alfonso Guzman, who serves as Chief Executive  
3 Officer; and

4 (f) On information and belief, LA PINATA OF PITTSBURG  
5 RESTAURANT INC.; LA PINATA OF ALAMEDA LLC; LA  
6 PINATA OF CONCORD RESTAURANT. INC.; TACOS LA PENCA  
7 AZUL LLC; and THE GUZMAN CORPORATION utilize the same  
8 standardized employment forms and issue the same employment  
9 policies.

#### 10 **GENERAL ALLEGATIONS**

11 21. Defendants operate a chain of Mexican food restaurants under the names “La  
12 Pinata” and “La Penca Azul,” with seven (7) total locations in northern California. Upon  
13 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)   
14 department at their company headquarters in Pittsburg, California, which is responsible for the  
15 recruiting and hiring of new employees, and communicating and implementing Defendants’  
16 company-wide policies, including timekeeping policies and meal and rest period policies, to  
17 employees throughout California.

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

25 23. Upon information and belief, Defendants maintain a centralized Payroll  
26 department at their company headquarters in Pittsburg, California, which processes payroll for  
27 all non-exempt, hourly paid employees working for Defendants at their various locations in  
28 California, including Plaintiff and class members. Based upon information and belief,

1 Defendants issue the same formatted wage statements to all non-exempt, hourly paid  
2 employees in California, irrespective of their work locations. Upon information and belief,  
3 Defendants process payroll for departing employees in the same manner throughout the State  
4 of California, regardless of the manner in which each employee's employment ends.

5 24. Defendants continue to employ non-exempt or hourly paid employees in  
6 California.

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

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

13 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
14 should have known that Plaintiff and class members were entitled to meal periods in  
15 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
16 one (1) additional hour of pay at their regular rates of pay when they were not provided with  
17 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members  
18 were not provided with all meal periods or payment of one (1) additional hour of pay at their  
19 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal  
20 period.

21 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22 should have known that Plaintiff and class members were entitled to rest periods in  
23 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
24 one (1) additional hour of pay at their regular rates of pay when they were not authorized and  
25 permitted to take a compliant rest period and that Plaintiff and class members were not  
26 authorized and permitted to take compliant rest periods or provided with payment of one (1)  
27 additional hour of pay at their regular rates of pay when they were not authorized and  
28 permitted to take a compliant rest period.

1           29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2 should have known that Plaintiff and class members were entitled to receive certain wages for  
3 overtime compensation and that they were not receiving certain wages for overtime  
4 compensation.

5           30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that Plaintiff and class members were entitled to receive at least minimum  
7 wages for compensation and that they were not receiving at least minimum wages for work  
8 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff  
9 and class members were not paid at least minimum wages for work done off-the-clock.

10          31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
11 should have known that Plaintiff and class members were entitled to receive complete and  
12 accurate wage statements in accordance with California law. In violation of the California  
13 Labor Code, Plaintiff and class members were not provided complete and accurate wage  
14 statements.

15          32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that they had a duty to maintain accurate and complete payroll records in  
17 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,  
18 knowingly, and intentionally failed to do so.

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

25          34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that Plaintiff and class members were entitled to timely payment of wages  
27 during their employment. In violation of the California Labor Code, Plaintiff and class  
28 members did not receive payment of all wages, including, but not limited to, overtime wages,

1 minimum wages, meal and rest period premiums, and/or reporting time pay, within  
2 permissible time periods.

3 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
4 should have known that Plaintiff and class members were entitled to one day's rest in seven.  
5 In violation of the California Labor Code, Defendants required Plaintiff and class members to  
6 work more than six consecutive days without a day of rest, where the total hours worked  
7 exceeded 30 hours in any week or six hours in any one day thereof.

8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
9 should have known that Plaintiff and class members were entitled to receive all reporting time  
10 pay when Plaintiff and class members were required to report to work but were put to work  
11 for less than half of their usual or scheduled shift. In violation of the California Labor Code  
12 and applicable IWC Wage Order, Plaintiff and class members were not paid all reporting time  
13 pay.

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

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

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

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 40. At all times herein set forth, PAGA provides that any provision of law under  
3 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be  
4 assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for  
5 violations of the California Labor Code and applicable IWC Wage Order may, as an  
6 alternative, be recovered by aggrieved employees in a civil action brought on behalf of  
7 themselves and other current or former employees pursuant to procedures outlined in  
8 California Labor Code section 2699.3.

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

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

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

18 (a) The aggrieved employee or representative shall give written notice by  
19 online filing with the LWDA and by certified mail to the employer of  
20 the specific provisions of the California Labor Code alleged to have  
21 been violated, including the facts and theories to support the alleged  
22 violation.

23 (b) An aggrieved employee’s notice filed with the LWDA pursuant to  
24 2699.3(a) and any employer response to that notice shall be  
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The LWDA shall notify the employer and the aggrieved employee or  
27 representative by certified mail that it does not intend to investigate the  
28 alleged violation (“LWDA Notice”) within sixty (60) calendar days of

1 the postmark date of the aggrieved employee's notice. Upon receipt of  
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five  
3 (65) calendar days of the postmark date of the aggrieved employee's  
4 notice, the aggrieved employee may commence a civil action pursuant  
5 to California Labor Code section 2699 to recover civil penalties.

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

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

27 45. On August 31, 2023, Plaintiff provided written notice by online filing to the  
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged  
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
4 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned  
5 Plaintiff PAGA Case Number LWDA-CM-978950-23. A true and correct copy of Plaintiff's  
6 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

10 47. Thus, Plaintiff has satisfied the administrative prerequisites under California  
11 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for  
12 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,  
13 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

26 50. As set forth below, Defendants have violated numerous provisions of both the  
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage  
28 Order.

51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

## CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

56. Members of the Class and Subclass are referred to herein as “class members.”

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

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

- (a) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (b) Whether Defendants failed to authorize and permit Plaintiff and class

members to take rest periods;

- (c) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (d) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay due to Plaintiff and class members during their employment;
- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their usual or scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11050, subsection 5;
- (k) Whether Defendants failed to reimburse Plaintiff and/or class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

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

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

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

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

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

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

## 18 **FIRST CAUSE OF ACTION**

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

#### 20 **Violations**

#### 21 **(Against all Defendants)**

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

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

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

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

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

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

23 65. As a result, Plaintiff and class members have had to work through all or part of  
24 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of  
25 time before taking meal periods. For example, Plaintiff missed his meal periods three (3)  
26 times per month in order to meet the restaurant's customer demand. When he was able to take  
27 a meal period, Plaintiff sometimes took his meal periods late, after having worked in excess of  
28 five (5) hours into his shift, in order to finish his assigned duties.

1           66. Further, on information and belief, because Defendants frowned upon  
2 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and  
3 class members' time records to reflect compliant meal periods, even when they did not receive  
4 a compliant meal period, in order to strictly limit the meal penalties that Defendants would  
5 otherwise owe. As a result of this policy, Defendants falsified and deducted meal periods  
6 from Plaintiff's and class members' time records even when meal periods were missed, short,  
7 interrupted, and/or late and thus systematically failed to correctly record meal periods.

8           67. Moreover, Defendants did not provide Plaintiff and class members with second  
9 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.  
10 During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but  
11 was not provided a second 30-minute meal period. Plaintiff and class members did not sign  
12 valid meal period waivers on days that they were entitled to meal periods and were not  
13 relieved of all duties.

14           68. At all times herein mentioned, Defendants knew or should have known that, as  
15 a result of these policies, Plaintiff and class members were prevented from being relieved of  
16 all duties and required to perform some of their assigned duties during meal periods.  
17 Defendants further knew or should have known that Defendants did not pay Plaintiff and class  
18 members meal period premiums when meal periods were late, interrupted, shortened, and/or  
19 missed.

20           69. Moreover, Defendants engaged in a company-wide practice and/or policy of  
21 not paying meal period premiums owed when compliant meal periods are not provided.  
22 Because of this practice and/or policy, Plaintiff and class members have not received premium  
23 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to  
24 provide Plaintiff and class members compliant meal periods in violation of California Labor  
25 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

26           70. Defendants' conduct violates the applicable IWC Wage Order, and California  
27 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore  
28 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular

1 rate of compensation for each work day that the meal period was not provided.

2 **SECOND CAUSE OF ACTION**

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

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

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

10 73. At all relevant times, the applicable IWC Wage Order provides that "[e]very  
11 employer shall authorize and permit all employees to take rest periods, which insofar as  
12 practicable shall be in the middle of each work period" and that the "rest period time shall be  
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
14 hours or major fraction thereof" unless the total daily work time is less than three and one-half  
15 (3 ½) hours.

16 74. At all relevant times, California Labor Code section 226.7 provides that no  
17 employer shall require an employee to work during any rest period mandated by an applicable  
18 order of the California IWC. To comply with its obligation to authorize and permit rest  
19 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an  
20 employer must "relinquish any control over how employees spend their break time, and  
21 relieve their employees of all duties—including the obligation that an employee remain on  
22 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*  
23 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California  
24 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from  
25 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a  
26 required rest period was not authorized and permitted.

27 75. During the relevant time period, Defendants regularly failed to authorize and  
28 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof. As with meal periods, Defendants' company-wide  
2 practices of understaffing while assigning heavy workloads prevented Plaintiff and class  
3 members from being relieved of all duty to take rest periods. Additionally, Defendants failed  
4 to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest  
5 period coverage, further led to Plaintiff and class members not being authorized and permitted  
6 to take rest periods.

7 76. Furthermore, upon information and belief, Defendants maintained and  
8 implemented a company-wide on-premises rest period policy, which effectively required that  
9 Plaintiff and class members remain on the premises during their rest periods. Because  
10 Plaintiff and class members were restricted from leaving Defendants' premises during rest  
11 periods, they were denied the ability to use their rest periods freely for their own purposes,  
12 such as completing personal errands. Thus, Defendants effectively maintained control over  
13 Plaintiff and class members during rest periods.

14 77. As a result of Defendants' practices and policies, Plaintiff and class members  
15 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
16 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,  
17 throughout his employment, Plaintiff had to forego all of his rest periods because the  
18 restaurant was busy, and he did not have sufficient rest period coverage.

19 78. Defendants have also engaged in a company-wide practice and/or policy of not  
20 paying rest period premiums owed when compliant rest periods are not authorized and  
21 permitted. Because of this practice and/or policy, Plaintiff and class members have not  
22 received premium pay for all missed rest periods.

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

28 //

1 **THIRD CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

6 81. Labor Code section 1198 makes it illegal to employ an employee under  
7 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor  
8 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission  
9 shall be the . . . standard conditions of labor for employees. The employment of any employee  
10 . . . under conditions of labor prohibited by the order is unlawful.”

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

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

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

25 85. California Labor Code section 510 codifies the right to overtime compensation  
26 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)  
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the  
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours  
2 in a day on the seventh (7th) day of work.

3 86. During the relevant time period, Defendants willfully failed to pay all overtime  
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and  
5 class members were not paid overtime premiums for all of the hours they worked in excess of  
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)  
7 hours in a week, because all hours worked were not recorded.

8 87. As set forth above, Defendants' company-wide policy and/or practice of  
9 understaffing their locations while assigning heavy workloads resulted in a failure to provide  
10 Plaintiff and class members with adequate meal period coverage because there were too few  
11 employees on duty to handle the workload and attend to customers. Because Defendants did  
12 not employ or staff a sufficient number of employees to meet customer demand, there was no  
13 one available to relieve employees needing meal period coverage, and Plaintiff and class  
14 members were not always afforded uninterrupted 30-minute meal periods during shifts when  
15 they were entitled to receive a meal period. Moreover, as also stated, Defendants had a  
16 practice of failing to schedule meal periods, which further caused Plaintiff and class members  
17 to not be relieved of their duties for compliant meal periods. Consequently, Plaintiff and class  
18 members were required to work through and/or had their unpaid meal periods interrupted in  
19 order to complete their assigned duties and handle customer demand, time for which they  
20 were not paid.

21 88. Further, as stated, on information and belief, because Defendants frowned upon  
22 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and  
23 class members' time records to reflect compliant meal periods, regardless of whether they had  
24 received a compliant meal period or not, in order to strictly limit the meal penalties that  
25 Defendants would otherwise owe. Thus, Defendants systematically failed to pay Plaintiff and  
26 class members for actual hours worked during unpaid meal periods because these hours were  
27 not always correctly recorded.

28 89. Defendants knew or should have known that as a result of these company-wide

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

7 90. Defendants' failure to pay Plaintiff and class members the balance of overtime  
8 compensation as required by California law, violates the provisions of California Labor Code  
9 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class  
10 members are entitled to recover from Defendants their unpaid overtime compensation, as well  
11 as interest, costs, and attorneys' fees.

#### 12 **FOURTH CAUSE OF ACTION**

#### 13 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 14 **Minimum Wages** 15 **(Against all Defendants)**

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

18 92. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,  
19 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the  
20 minimum wage to be paid to employees, and the payment of a wage less than the minimum so  
21 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the  
22 time during which an employee is subject to the control of an employer, and includes all the  
23 time the employee is suffered or permitted to work, whether or not required to do so." Cal.  
24 Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

25 93. As set forth above, due to Defendants' policies and/or practices of  
26 understaffing their restaurants while assigning heavy workloads and failing to schedule meal  
27 periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods  
28 to which they were entitled and were required to work off-the-clock during meal periods, have

1 their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid  
2 meal periods. Moreover, as stated, in order to prevent employees from accruing meal period  
3 penalties, upon information and belief, Defendants' management adjusted Plaintiff's and class  
4 member's time records to reflect compliant meal periods, even when meal periods were  
5 missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and  
6 class members for actual hours worked during unpaid meal periods because these hours were  
7 not always correctly recorded.

8 94. Defendants did not pay minimum wages for all hours worked by Plaintiff and  
9 class members. To the extent that these off-the-clock hours did not qualify for overtime  
10 premium payment, Defendants did not pay at least minimum wages for those hours worked  
11 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
12 1198.

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

## 18 **FIFTH CAUSE OF ACTION**

### 19 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 20 **Statements and Failure to Maintain Accurate Payroll Records** 21 **(Against all Defendants)**

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

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

1           98.     At all relevant times, Defendants have knowingly and intentionally provided  
2 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.  
3 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members  
4 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all  
5 applicable hourly rates in effect during the pay period, including rates of pay for overtime  
6 wages, and the corresponding number of hours worked at each hourly rate. Specifically,  
7 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

8           99.     Because Defendants did not record the time Plaintiff and Subclass members  
9 spent working off the clock, Defendants did not list the correct amount of gross wages and net  
10 wages earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and  
11 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours  
12 worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list  
13 the applicable hourly rates of pay in effect during the pay period and the corresponding  
14 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

23           101.    California Labor Code section 1174(d) provides that “[e]very person employing  
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees  
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
26 plants or establishments at which employees are employed, payroll records showing the hours  
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments . . . .” At all relevant times, and in violation of Labor Code section 1174(d),  
2 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass  
3 members showing the daily hours they worked and the wages paid thereto as a result of failing  
4 to record the off-the-clock hours that they worked.

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

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

## 23 SIXTH CAUSE OF ACTION

### 24 Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon 25 Termination 26 (Against all Defendants)

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

1           105. At all times relevant herein set forth, Labor Code sections 201 and 202 provide  
2 that if an employer discharges an employee, the wages earned and unpaid at the time of  
3 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
4 her employment, his or her wages shall become due and payable not later than seventy-two  
5 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
6 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
7 time of quitting.

8           106. On information and belief, Defendants have a company-wide practice and/or  
9 policy of paying departing employees their final wages on the next regular pay cycle, instead  
10 of adhering to the time requirements set forth in Labor Code sections 201 and 202. For  
11 example, on information and belief, Plaintiff provided Defendants with more than seventy-two  
12 (72) hours' notice of his intention to quit; however, Defendants did not pay him his final  
13 wages until one week later. Thus, Defendants failed to pay Plaintiff his final wages at the  
14 time of quitting, in violation of California Labor Code section 202.

15           107. Additionally, Defendants willfully failed to pay Plaintiff and class members  
16 who are no longer employed by Defendants the earned and unpaid wages set forth above,  
17 including but not limited to, overtime wages, minimum wages, meal and rest period  
18 premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two  
19 (72) hours of their leaving Defendants' employ.

20           108. Defendants' failure to pay Plaintiff and class members who are no longer  
21 employed by Defendants their wages earned and unpaid at the time of discharge, or within  
22 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
23 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the  
24 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a  
25 thirty (30) day maximum pursuant to California Labor Code section 203.

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**SEVENTH CAUSE OF ACTION**  
**Violation of California Labor Code § 204—Failure to Timely Pay Wages During**  
**Employment**  
**(Against all Defendants)**

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

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

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

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

113. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

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

#### **EIGHTH CAUSE OF ACTION**

#### **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)—Failure to Provide Reporting Time Pay (Against all Defendants)**

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

116. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

117. The applicable IWC Wage Order, California Code of Regulations, Title 8, section 11050(5)(A), provides that “[e]ach workday an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day’s work, the employer shall be pay him/her for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

118. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because Defendants failed to pay Plaintiff and class members reporting time pay when they reported to

1 work for their scheduled shift but were put to work for less than half of the usual or scheduled  
2 day's work.

3 119. Defendants had a company-wide practice of sending Plaintiff and class  
4 members home early from their shifts, including before they had worked at least half of their  
5 usual or scheduled shift, but would not pay Plaintiff and class members for half of their  
6 scheduled shift. For example, at least four (4) times throughout his employment, when  
7 scheduled to work more than a six (6) hour shift, Defendants' managers sent Plaintiff home  
8 before he had the opportunity to work at least half of his scheduled shift because business was  
9 slow, but on information and belief, Plaintiff was only paid for the time he had worked.  
10 Although Plaintiff and class members reported to work based on the schedule that was  
11 provided to them, Defendants would send them home before they worked at least half of their  
12 usual or scheduled shifts. When this occurred, Defendants did not pay Plaintiff and class  
13 members for at least half of their scheduled day's work or the minimum reporting time pay.

14 120. Accordingly, Plaintiff and class members were not properly compensated with  
15 reporting time pay in violation of California Labor Code section 1198 and California Code of  
16 Regulations, Title 8, section 11050(5)(A). Plaintiff and class members are therefore entitled  
17 to recover from Defendants unpaid wages and interest.

## 18 **NINTH CAUSE OF ACTION**

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

#### 20 **(Against all Defendants)**

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

23 122. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover  
24 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
25 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,  
26 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section  
27 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for  
28 violations of those Labor Code sections not found in section 2699.5, including sections 516,

1 1182.12, and 2810.5.

2 123. Defendants' conduct, as alleged herein, violates numerous sections of the  
3 California Labor Code, including, but not limited to, the following:

- 4 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the  
5 applicable IWC Wage Order for Defendants' failure to provide Plaintiff  
6 and other aggrieved employees with meal periods, as alleged herein;
- 7 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the  
8 applicable IWC Wage Order for Defendants' failure to authorize and  
9 permit other aggrieved employees to take rest periods, as alleged herein;
- 10 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC  
11 Wage Order for Defendants' failure to compensate Plaintiff and other  
12 aggrieved employees with all required overtime pay, as alleged herein  
13 and as alleged herein;
- 14 (d) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
15 1198, and the applicable IWC Wage Order for Defendants' failure to  
16 compensate Plaintiff and other aggrieved employees with at least  
17 minimum wages for all hours worked, as alleged herein;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable  
19 IWC Wage Order for failure to provide accurate and complete wage  
20 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable  
22 IWC Wage Order for failure to maintain payroll records, as alleged  
23 herein;
- 24 (g) Violation of Labor Code sections 201 and 202 for failure to pay all  
25 earned wages upon termination, as alleged herein;
- 26 (h) Violation of Labor Code section 204 for failure to pay all earned wages  
27 during employment, as alleged herein;
- 28 (i) Violation of Labor Code section 551 and 552 for failure to provide

1 Plaintiff and other aggrieved employees one day's rest in seven, as set  
2 forth below;

- 3 (j) Violation of Labor Code section 1198 and the applicable IWC Wage  
4 Order for failing to pay reporting time pay to Plaintiff and other  
5 aggrieved employees, as alleged herein;
- 6 (k) Violation of Labor Code section 2802 for failure to reimburse other  
7 aggrieved employees for all business expenses necessarily incurred, as  
8 set forth below; and
- 9 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to  
10 provide written notice of information material to Plaintiff's and other  
11 aggrieved employees' employment with Defendants, as set forth below.

12 124. At all relevant times herein, California Labor Code section 551 provides that  
13 every person employed in any occupation of labor is entitled to one day's rest in seven.  
14 Additionally, California Labor Code section 552 prohibits employers from requiring  
15 employees to work more than six consecutive days without a day of rest.

16 125. At all relevant times herein set forth, California Labor Code section 556  
17 exempts an employer from the day-of-rest requirement when the total hours worked by an  
18 employee do not exceed 30 hours in any week or six hours in any one day thereof.

19 126. During the relevant period, on information and belief, Defendants required  
20 Plaintiff and other aggrieved employees to work six (6) or more hours per day and seven (7)  
21 consecutive days in a workweek. Because Plaintiff and other aggrieved employees worked  
22 over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they  
23 were not exempt from the day-of-rest requirement. To the extent that Plaintiff and other  
24 aggrieved employees signed purported waivers of their right to a day's rest in seven, such  
25 waivers are invalid.

26 127. Thus, during the relevant time period, and in violation of Labor Code sections  
27 551 and 552, Defendants caused Plaintiff and other aggrieved employees to work more than  
28 six days in seven. Plaintiff and other aggrieved employees are therefore entitled to recover

1 civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

2 128. At all relevant times, California Labor Code section 2802 requires employers to  
3 pay for all necessary expenditures and losses incurred by the employee in the performance of  
4 his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing  
5 off their cost of doing business and operating expenses on to their employees. *Cochran v.*  
6 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage  
7 order, IWC Wage Order No. 5-2001, provides that: "[w]hen uniforms are required by the  
8 employer to be worn by the employee as a condition of employment, such uniforms shall be  
9 provided and maintained by the employer."

10 129. During the relevant time period, Defendants, on a company-wide basis,  
11 required other aggrieved employees to report to work in clean and presentable uniforms  
12 bearing the company logo and name. However, Defendants did not provide their employees  
13 with sufficient uniforms to wear for their shifts throughout the week. Because Defendants  
14 failed to provide other aggrieved employees with an adequate number of uniforms in relation  
15 to the tasks they were required to perform, on information and belief, other aggrieved  
16 employees had to wash their uniforms more frequently than they otherwise would do laundry,  
17 and incur expenses in doing so. Thus, Defendants failed to maintain the uniforms they  
18 required other aggrieved employees to wear during their shifts and forced them to incur the  
19 cost of maintaining employee uniforms.

20 130. Defendants could have provided other aggrieved employees with an adequate  
21 number of uniforms or access to laundering services. Or, Defendants could have reimbursed  
22 employees for the costs of their laundering expenses or provided a uniform maintenance  
23 allowance. Instead, Defendants passed these operating costs off onto other aggrieved  
24 employees.

25 131. Thus, Defendants had, and continue to have, a company-wide policy and/or  
26 practice of not reimbursing employees for expenses necessarily incurred in violation of  
27 California Labor Code section 2802. Other aggrieved employees are therefore entitled to  
28 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

## TENTH CAUSE OF ACTION

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

## Unlawful Business Practices

**(Against all Defendants)**

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

135. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

136. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has  
2 suffered injury in fact and has lost money as a result of Defendants' unlawful business  
3 practices. Plaintiff seeks to enforce important rights affecting the public interest within the  
4 meaning of Code of Civil Procedure section 1021.5.

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

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

- 11 (a) Failing to provide all meal periods to Plaintiff and class members in  
12 violation of California Labor Code sections 226.7, 512(a), 516, and  
13 1198, and the applicable IWC Wage Order, as alleged herein;
- 14 (b) Failing to authorize and permit Plaintiff and class members to take all  
15 rest periods in violation of California Labor Code sections 226.7, 516,  
16 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 17 (c) Requiring non-exempt, hourly paid employees, including Plaintiff and  
18 class members, to work overtime without paying them proper  
19 compensation in violation of California Labor Code sections 510 and  
20 1198, and the applicable IWC Wage Order, as alleged herein;
- 21 (d) Failing to pay at least minimum wage to Plaintiff and class members in  
22 violation of California Labor Code sections 1182.12, 1194, 1197,  
23 1197.1, and 1198, and the applicable IWC Wage Order, as alleged  
24 herein;
- 25 (e) Failing to provide Plaintiff and class members with accurate wage  
26 statements and failing to maintain accurate payroll records in violation  
27 of California Labor Code sections 226(a), 1174(d), and 1198, and the  
28 applicable IWC Wage Order, as alleged herein;

- 1 (f) Failing timely to pay all earned wages to Plaintiff and class members in  
2 violation of California Labor Code section 204, as alleged herein;
- 3 (g) Failing to provide one day's rest in seven to Plaintiff and class members  
4 in violation of California Labor Code sections 551 and 552, as set forth  
5 below;
- 6 (h) Failing to pay reporting time pay in violation of California Labor Code  
7 section 1198 and the applicable IWC Wage Order, as alleged herein;  
8 and
- 9 (i) Failing to provide written notice of information material to Plaintiff's  
10 and class members' employment with Defendants in violation of  
11 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

12 139. At all relevant times herein, California Labor Code section 551 provides that  
13 every person employed in any occupation of labor is entitled to one day's rest in seven.  
14 Additionally, California Labor Code section 552 prohibits employers from requiring  
15 employees to work more than six consecutive days without a day of rest.

16 140. At all relevant times herein set forth, California Labor Code section 556  
17 exempts an employer from the day-of-rest requirement when the total hours worked by an  
18 employee do not exceed 30 hours in any week or six hours in any one day thereof.

19 141. During the relevant time period, on information and belief, Defendants  
20 scheduled Plaintiff and class members to work six (6) or more hours per day and seven (7)  
21 consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours  
22 per week and over six (6) hours per day in any one day in a workweek, they were not exempt  
23 from the day-of-rest requirement. To the extent that Plaintiff and class members may have  
24 signed purported waivers of their right to a day's rest in seven, such waivers are invalid.  
25 Thus, Defendants willfully caused Plaintiff and class members to work more than six days in  
26 seven, in violation of Labor Code sections 551 and 552.

27 142. At all relevant times herein, California's Wage Theft Prevention Act was  
28 enacted to ensure that employers provide employees with basic information material to their

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

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

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

19 145. Pursuant to California Business & Professions Code sections 17200, *et seq.*,  
20 Plaintiff and class members are entitled to restitution of the wages withheld and retained by  
21 Defendants during a period that commences four years prior to the filing of this complaint; a  
22 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and  
23 class members; and an award of attorneys' fees pursuant to California Code of Civil  
24 Procedure section 1021.5 and other applicable laws; and an award of costs.

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1 **ELEVENTH CAUSE OF ACTION**

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

3 **Unfair Business Practices**

4 **(Against all Defendants)**

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

7 147. Defendants are “persons” as defined by California Business & Professions  
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,  
9 and/or associations.

10 148. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,  
11 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered  
12 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff  
13 seeks to enforce important rights affecting the public interest within the meaning of Code of  
14 Civil Procedure section 1021.5.

15 149. Defendants’ activities, namely Defendants’ company-wide practice and/or  
16 policy of not paying Plaintiff and class members all meal and rest period premiums due to  
17 them under Labor Code section 226.7, deprived Plaintiff and class members of the  
18 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
19 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to  
20 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*  
21 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7  
22 were guaranteed to Plaintiff and class members as part of their employment with Defendants,  
23 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an  
24 unfair business practice in violation of California Business & Professions Code sections  
25 17200, *et seq.* (*Id.*)

26 150. A violation of California Business & Professions Code sections 17200, *et seq.*  
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies  
28 and practices have violated the spirit of California’s meal and rest period laws and constitute

1 acts against the public policy behind these laws.

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

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

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

17 **Class Certification**

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

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

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

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

- 28 7. For all actual, consequential, and incidental losses and damages, according to

1 proof;

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

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

5 10. For attorneys' fees pursuant to California Code of Civil Procedure section  
6 1021.5, or as otherwise provided by law; and

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

9 **As to the Second Cause of Action**

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

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

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

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

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

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

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

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

26 19. That the Court declare, adjudge, and decree that Defendants violated California  
27 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to  
28 pay all overtime wages due to Plaintiff and class members;

20. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

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

22. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

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

**As to the Fourth Cause of Action**

24. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

25. For general unpaid wages and such general and special damages as may be appropriate;

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

27. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

**As to the Fifth Cause of Action**

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

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

- 1           32.     For injunctive relief pursuant to California Labor Code section 226(h);  
2           33.     For statutory penalties pursuant to California Labor Code section 226(e);  
3           34.     For attorneys' fees and costs pursuant to California Labor Code section  
4 226(e)(1); and  
5           35.     For such other and further relief as the Court may deem equitable and  
6 appropriate.

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

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

12           37.     For all actual, consequential and incidental losses and damages, according to  
13 proof;

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

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

18           40.     For attorneys' fees pursuant to California Code of Civil Procedure section  
19 1021.5, or as otherwise provided by law; and

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

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

23           42.     That the Court declare, adjudge and decree that Defendants violated California  
24 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members  
25 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay  
26 during their employment;

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

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

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

5           46.     For attorneys' fees pursuant to California Code of Civil Procedure section  
6 1021.5, or as otherwise provided by law; and

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

9                           **As to the Eighth Cause of Action**

10          48.     That the Court declare, adjudge and decree that Defendants violated California  
11 Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A) by  
12 failing to provide Plaintiff and class members with reporting time pay;

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

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

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

19                           **As to the Ninth Cause of Action**

20          52.     That the Court declare, adjudge and decree that Defendants violated the  
21 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:  
22 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by  
23 failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all overtime  
24 compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum  
25 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage  
26 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all  
27 earned wages upon termination); 204 (by failing to timely pay all earned wages during  
28 employment); 551 and 552 (by failing to provide one day's rest in seven); 1198 (by failing to

provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

53. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

54. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

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

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

57. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to provide one day's rest in seven, failing to pay Plaintiff and class members reporting time pay, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

59. For the appointment of a receiver to receive, manage, and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by  
2 Defendants as a result of violations of California Business & Professions Code sections  
3 17200, *et seq.*;

4 60. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
5 California Code of Civil Procedure section 1021.5; and

6 61. For such other and further relief as the Court may deem equitable and  
7 appropriate.

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

9 62. That the Court declare, adjudge and decree that Defendants' conduct of denying  
10 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes  
11 an unfair business practice in violation of California Business and Professions Code sections  
12 17200, *et seq.*;

13 63. For restitution of the statutory benefits under section 226.7 unfairly withheld  
14 from Plaintiff and class members and prejudgment interest from the day such amounts were  
15 due and payable;

16 64. For the appointment of a receiver to receive, manage, and distribute any and all  
17 funds disgorged from Defendants and determined to have been wrongfully acquired by  
18 Defendants as a result of violations of California Business & Professions Code sections  
19 17200, *et seq.*;

20 65. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
21 California Code of Civil Procedure section 1021.5;

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

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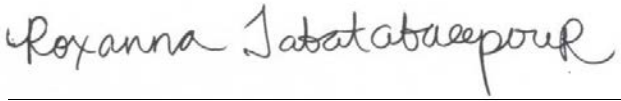
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1           67.     For such other and further relief as the Court may deem equitable and  
2 appropriate.

3  
4 Dated: November 6, 2023

Respectfully submitted,

5 Capstone Law APC

6  
7 By:   
8 Roxanna Tabatabaeepour  
9 Ryan Tish  
Alexander Wallin

10 Attorneys for Plaintiff Alberto Espinal Herrera  
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# Exhibit C



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Los Angeles, California 90067  
310.556.4811 Main | 310.943.0396 Fax

JEZZETTE RON  
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August 31, 2023

VIA ONLINE SUBMISSION

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

Subject: *Alberto Espinal Herrera v. La Pinata of Pittsburg Restaurant Inc., et al.*

Dear PAGA Administrator:

This office represents Alberto Espinal Herrera in connection with his claims under the California Labor Code. Mr. Espinal Herrera was an employee of LA PINATA OF PITTSBURG RESTAURANT INC.; LA PINATA OF ALAMEDA LLC; LA PINATA OF CONCORD RESTAURANT. INC.; TACOS LA PENCA AZUL LLC; and/or THE GUZMAN CORPORATION. For the purposes of this letter, Mr. Espinal Herrera collectively refers to these entities as "LA PINATA."

The employers may be contacted directly at the addresses below:

|                                        |                         |
|----------------------------------------|-------------------------|
| LA PINATA OF PITTSBURG RESTAURANT INC. | TACOS LA PENCA AZUL LLC |
| 95 BLISS AVENUE                        | 1231 40TH AVE           |
| PITTSBURG, CA 94565                    | OAKLAND, CA 94601       |

|                          |                        |
|--------------------------|------------------------|
| LA PINATA OF ALAMEDA LLC | THE GUZMAN CORPORATION |
| 1440 PARK STREET         | 2699 MERCED ST         |
| ALAMEDA, CA 94501        | SAN LEANDRO CA 94577   |

LA PINATA OF CONCORD RESTAURANT. INC.  
2301 WILLOW PASS RD  
CONCORD CA 94520

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

LA PINATA employed Mr. Espinal Herrera as an hourly paid, non-exempt Busser from approximately September 2021 to December 2022. During his employment, Mr. Espinal Herrera typically worked six (6) or more hours per day and five (5) or more days per week. At the time his employment ended, Mr. Espinal Herrera was compensated approximately \$15.00 per hour. His primary job duties included, without limitation, cleaning and clearing tables, mopping, sweeping, and taking out trash.

LA PINATA committed one or more of the following Labor Code violations against Mr. Espinal Herrera, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

**LA PINATA’s Company-Wide and Uniform Payroll and HR Practices**

LA PINATA OF PITTSBURG RESTAURANT INC.; LA PINATA OF CONCORD RESTAURANT, INC. and THE GUZMAN CORPORATION are California corporations. LA PINATA OF ALAMEDA LLC and TACOS LA PENCA AZUL LLC are California limited Liability companies. Together, they operate a chain of Mexican food restaurants under the names “La Pinata” and “La Penca Azul,” with seven (7) total locations in northern California. Upon information and belief, LA PINATA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Pittsburg, California, for all non-exempt, hourly paid employees working for LA PINATA in California, including Mr. Espinal Herrera and other aggrieved employees. At all relevant times, LA PINATA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Espinal Herrera and other aggrieved employees, regardless of their location or position.

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

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

As a result, Mr. Espinal Herrera and other aggrieved employees have had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Espinal Herrera missed his meal periods three (3) times per month in order to meet the restaurant’s customer demand. When he was able to take a meal period, Mr. Espinal Herrera sometimes took his meal periods late, after having worked in excess of five (5) hours into his shift, in order to finish his assigned duties.

Further, on information and belief, because LA PINATA frowned upon employees accruing meal period penalties, LA PINATA’s management adjusted Mr. Espinal Herrera’s and other aggrieved employees’ time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that LA PINATA would otherwise owe. As a result of this policy, LA PINATA falsified and deducted meal periods from Mr. Espinal Herrera’s and other aggrieved employees’ time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

Moreover, LA PINATA did not provide Mr. Espinal Herrera and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Espinal Herrera worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Espinal Herrera and other aggrieved

employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Moreover, LA PINATA engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Espinal Herrera and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that LA PINATA did pay other aggrieved employees for missed, late, and interrupted meal periods, LA PINATA did so at the incorrect rates. In addition to an hourly wage, LA PINATA paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LA PINATA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when other aggrieved employees received meal period premiums and these other forms of pay, LA PINATA failed to pay full meal period premiums by paying a lower rate than required.

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

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

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

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

During the relevant time period, LA PINATA regularly failed to authorize and permit Mr. Espinal Herrera and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, LA PINATA's company-wide practices of understaffing while assigning heavy workloads prevented Mr. Espinal Herrera and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, LA PINATA failed to schedule rest periods, which, coupled with LA PINATA's failure to provide adequate rest period coverage, further led to Mr. Espinal Herrera and other aggrieved employees not being authorized and permitted to take rest periods.

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

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

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

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

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

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

LA PINATA willfully failed to pay all overtime wages owed to Mr. Espinal Herrera and other aggrieved employees. During the relevant time period, Mr. Espinal Herrera and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

As set forth above, LA PINATA's company-wide policy and/or practice of understaffing its restaurants while assigning heavy workloads resulted in a failure to provide Mr. Espinal Herrera and other aggrieved employees with adequate meal period coverage because there were too few employees on duty to handle the workload and attend to customers. Because LA PINATA did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Espinal Herrera and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Also, as stated, LA PINATA had a practice of failing to schedule meal periods, which further caused Mr. Espinal Herrera and other aggrieved employees to not be relieved of their duties for complaint meal periods. Consequently, Mr. Espinal Herrera and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their duties and handle customer demand, time for which they were not paid.

Further, as stated, on information and belief, because LA PINATA frowned upon employees accruing meal period penalties, LA PINATA's management adjusted Mr. Espinal Herrera's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that LA PINATA would otherwise owe. Thus, LA PINATA systematically failed to pay Mr. Espinal Herrera and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Furthermore, LA PINATA did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. LA PINATA failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LA PINATA failed to pay all overtime wages by paying a lower overtime rate than required.

LA PINATA's failure to pay Mr. Espinal Herrera and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Espinal Herrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As set forth above, due to LA PINATA’s policies and/or practices of understaffing its restaurants while assigning heavy workloads and failing to schedule meal periods, Mr. Espinal Herrera and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, LA PINATA’s management adjusted Mr. Espinal Herrera’s and other aggrieved employees’ time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, LA PINATA systematically failed to pay Mr. Herrera Espinal and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

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

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

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

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

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is

unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LA PINATA engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Espinal Herrera and other aggrieved employees, in violation of section 1198. Also, in light of LA PINATA’s failure to provide Mr. Espinal Herrera and other aggrieved employees with second 30-minute meal periods to which they were entitled, LA PINATA kept no records of meal start and end times for second meal periods.

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

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

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

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

During the relevant time period, LA PINATA willfully failed to pay Mr. Espinal Herrera and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

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

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

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, LA PINATA has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, on information and belief, Mr. Espinal Herrera provided LA PINATA with more than seventy-two (72) hours' notice of his intention to quit; however, LA PINATA did not provide Mr. Espinal Herrera with his final wages until one week later. Thus, LA PINATA failed to pay Mr. Espinal Herrera his final wages immediately, in violation of California Labor Code sections 202.

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

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

**Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven**

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, on information and belief, LA PINATA required Mr. Espinal Herrera and other aggrieved employees to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Mr. Espinal Herrera and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Espinal Herrera and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, LA PINATA caused Mr. Espinal Herrera and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Espinal Herrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

**Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay**

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

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

LA PINATA had a company-wide practice of sending Mr. Espinal Herrera and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Espinal Herrera and other aggrieved employees for half of their usual or scheduled shift. For example, at least four (4) times throughout his employment, when scheduled to work a six (6) hour shift, LA PINATA’s managers sent Mr. Espinal Herrera home before he had an opportunity to work at least half of his scheduled shift because business was slow, but on information and belief, Mr. Espinal Herrera was only paid for the time he had worked. Although Mr. Espinal Herrera and other aggrieved employees would report to work based on the schedule that LA PINATA provided to them, LA PINATA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

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

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

**Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen

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.”

During the relevant time period, LA PINATA, on a company-wide basis, required other aggrieved employees to report to work in clean and presentable uniforms bearing the company logo and name. However, LA PINATA did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. Because LA PINATA failed to provide other aggrieved employees with an adequate number of uniforms in relation to the tasks they were required to perform, on information and belief, other aggrieved employees had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. Thus, LA PINATA failed to maintain the uniforms it required other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

LA PINATA could have provided other aggrieved employees with an adequate number of uniforms or access to laundering services. Or, LA PINATA could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, LA PINATA passed these operating costs off onto other aggrieved employees.

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

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

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

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

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

**California Labor Code § 558(a)**

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” LA PINATA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Espinal Herrera’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Espinal Herrera seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Espinal Herrera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against LA PINATA for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,



Jezzette Ron

Copy: LA PINATA OF PITTSBURG RESTAURANT INC. (via U.S. Certified Mail); LA PINATA OF ALAMEDA LLC (via U.S. Certified Mail); LA PINATA OF CONCORD RESTAURANT. INC. (via U.S. Certified Mail); TACOS LA PENCA AZUL LLC (via U.S. Certified Mail); THE GUZMAN CORPORATION (via U.S. Certified Mail)

Capstone Law, APC  
1875 Century Park, East, 1000  
Los Angeles, CA. 90067



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RESTAURANT INC.  
95 BLISS AVENUE  
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1875 Century Park, East, 1000  
Los Angeles, CA 90067

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1440 PARK STREET  
ALAMEDA, CA 94501

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LA PINATA OF ALAMEDA LLC  
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LA PINATA OF CONCORD  
RESTAURANT, INC.  
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Capstone Law, APC  
1875 Century Park, East, 1000  
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TACOS LA PENCA AZUL LLC  
1231 40TH AVE  
OAKLAND, CA 94601

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TACOS LA PENCA AZUL LLC  
1231 40TH AVE  
OAKLAND, CA 94601

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THE GUZMAN CORPORATION  
2699 MERCED ST  
SAN LEANDRO CA 94577

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THE GUZMAN CORPORATION  
2699 MERCED ST  
SAN LEANDRO CA 94577

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X

□ Agent  
□ Addressee

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LA PINATA OF ALAMEDA LLC  
1440 PARK STREET  
ALAMEDA, CA 94501



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Received by (Printed Name) Xosmar Ramirez ☐ Agent  
☐ Addressee

C. Date of Delivery

9/2/23

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☐ Addressee

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A. Signature

x *Diana*

☐ Agent

☐ Addressee

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*Diana*

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*09/03/23*

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RESTAURANT. INC.  
2301 WILLOW PASS RD  
CONCORD CA 94520**



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| <input checked="" type="checkbox"/> Certified Mail®              | <input type="checkbox"/> Registered Mail Restricted Delivery        |
| <input type="checkbox"/> Certified Mail Restricted Delivery      | <input type="checkbox"/> Signature Confirmation™                    |
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**PROOF OF SERVICE**

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

On **November 6, 2023**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ ☐ as stated on the attached service list:

Alvis Quashnock & Associates APC  
613 First Street, Suite 202  
Brentwood, CA 94513

Agents of Service for Defendant  
LA PINATA OF PITTSBURG  
RESTAURANT INC.

Octavio Guzman  
1440 Park Street,  
Alameda, CA 94501

Agents of Service for Defendant  
LA PINATA OF ALAMEDA LLC,

Alfonso Guzman  
2301 Willow Pass Rd  
Concord, CA 94520

Agents of Service for Defendant  
LA PINATA OF CONCORD  
RESTAURANT. INC.

Adriana Pinedo  
17262 Via Frances  
San Lorenzo, CA 94580

Agents of Service for Defendant  
TACOS LA PENCA AZUL LLC

Alfonso Guzman  
2699 Merced St  
San Lorenzo, CA 94580

Agents of Service for Defendant  
THE GUZMAN CORPORATION

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

☒ **BY PERSONAL SERVICE:** I have arranged for this document to be personally served through ProLegal on the agents of service listed above.

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **November 6, 2023**, at Los Angeles, California.

Trevor Beach  
Type/Print Name

/s/ Trevor Beach  
Signature