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behalf of others similarly situated and on behalf
of other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RIGOBERTO TECALIZ, individually and on
behalf of others similarly situated and on behalf
of other aggrieved employees,

Plaintiff,

vs.

NATIONAL RESTAURANT INC. DBA
BLACK BEAR DINER, a California
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 37-2023-00046906-CU-OE-CTL

*Assigned to Honorable Matthew C. Braner,
Dept. C-60*

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

- (1) Violation of Cal. Labor Code §§ 1194,
1197 and 1197.1 (Unpaid Minimum
Wages)**
- (2) Violation of Cal. Labor Code §§ 510
and 1198 (Unpaid Overtime)**
- (3) Violation of Cal. Labor Code §§ 226.7
and 512(a) (Unpaid Meal Period
Premiums)**
- (4) Violation of Cal. Labor Code § 226.7
(Unpaid Rest Period Premiums)**
- (5) Violation of Cal. Labor Code §§ 204
and 210 (Wages Not Timely Paid
During Employment)**

- 1 (6) Violation of Cal. Labor Code § 226(a)
2 (Failure to Provide Accurate Wage
3 Statements)
4 (7) Violation of Cal. Labor Code §§ 201,
5 202 and 203 (Untimely Final Wages)
6 (8) Violation of Cal. Labor Code §§ 2800
7 and 2802 (Failure to Reimburse
8 Necessary Business Expenses)
9 (9) Violation of Cal. Business &
10 Professions Code § 17200, *et seq.*
11 (10) Violation of Cal. Labor Code § 2699,
12 *et seq.* (Private Attorneys General
13 Act)

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DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff RIGOBERTO TECALIZ (“Plaintiff”), individually and on behalf of all members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Labor Code Private Attorneys General Act, and alleges as follows against Defendants NATIONAL RESTAURANT INC. DBA BLACK BEAR DINER, and DOES 1 through 25, inclusive (“Defendants”):

INTRODUCTION

1. Plaintiff brings this action against Defendants NATIONAL RESTAURANT INC. DBA BLACK BEAR DINER and DOES 1 through 25 (hereinafter also collectively referred to as “Defendants”) for California Labor Code violations, unfair business practices, and civil penalties stemming from Defendants’ failure to pay overtime compensation, failure to provide meal periods, failure to authorize and permit rest periods, failure to pay minimum wage, failure to timely pay wages during and upon termination of employment, failure to provide accurate wage statements, failure to maintain accurate time and payroll records, and failure to reimburse necessary business-related expenses.

2. Plaintiff’s First through Ninth Causes of Action are brought as a class action on behalf of himself and similarly situated current and former employees of Defendants (hereinafter collectively referred to as the “Class” or “Class Members”) pursuant to California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

3. Plaintiff’s Tenth Cause of Action is brought as a representative action on behalf of himself and certain other current and former employees of Defendant NATIONAL RESTAURANT INC. DBA BLACK BEAR DINER against whom one or more of the alleged violations was committed (hereinafter collectively referred to as the “Aggrieved Employees”) pursuant to California Labor Code sections 2698, *et seq.* Plaintiff is an aggrieved employee against whom one or more of the alleged violations occurred. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

JURISDICTION AND VENUE

4. This action is brought pursuant to California Code of Civil Procedure section 382 and

1 California Labor Code sections 2698, *et seq.*

2 5. The monetary damages, restitution, statutory penalties, and other applicable legal and
3 equitable relief sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and
4 will be established according to proof at trial.

5 6. This Court has jurisdiction over this action pursuant to the California Constitution,
6 Article VI, section 10, which grants the superior court “original jurisdiction in all other causes” except
7 those given by statute to other courts. The statutes under which this action is brought do not specify
8 any other basis for jurisdiction.

9 7. This Court has jurisdiction over all Defendants because, upon information and belief,
10 Defendants are either citizens of California, have sufficient minimum contacts in California, or
11 otherwise intentionally avail themselves of the California market so as to render the exercise of
12 jurisdiction over them by the California courts consistent with traditional notions of fair play and
13 substantial justice. Further, no federal question is at issue because the claims asserted herein are based
14 solely on California law.

15 8. Venue is proper in this Court because, upon information and belief, Defendants
16 maintain offices, have agents, employ individuals, and/or transact business in the State of California,
17 County of San Diego. The majority of the acts, events, and violations alleged herein relating to
18 Plaintiff occurred in the State of California, County of San Diego.

19 **THE PARTIES**

20 9. At all times herein mentioned, Plaintiff RIGOBERTO TECALIZ is and was an
21 individual residing in San Diego County in the State of California.

22 10. At all times herein mentioned, Defendant NATIONAL RESTAURANT INC. DBA
23 BLACK BEAR DINER was and is, an employer who does business in California, with locations
24 throughout the state of California, and whose employees are engaged throughout San Diego County
25 and the State of California, including at 1025 Fletcher Parkway, El Cajon, CA 92020.

26 11. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under
27 the fictitious names DOES 1 through 25 but will seek leave of this Court to amend the complaint and
28 serve such fictitiously named Defendants once their names and capacities become known.

1 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
2 omissions alleged herein were performed by, or are attributable to Defendants NATIONAL
3 RESTAURANT INC. DBA BLACK BEAR DINER and/or DOES 1 through 25, each acting as the
4 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
5 Defendants and within the course and scope of such agency, employment, joint venture, or concerted
6 activity with legal authority to act on the others' behalf. The acts of any and all Defendants represent
7 and were in accordance with Defendants' official policies.

8 13. At all relevant times, Defendants were the employers of Plaintiff within the meaning
9 of all applicable state laws and statutes. Defendants directly or indirectly controlled or affected the
10 working conditions, wages, working hours, and conditions of employment of Plaintiff so as to make
11 each of said Defendants employers and employers liable under the statutory provisions set forth herein.

12 14. Defendants had the authority to hire and terminate Plaintiff and the other class
13 members and aggrieved employees, to set work rules and conditions governing their employment,
14 and to supervise their daily employment activities.

15 15. Defendants exercised sufficient authority over the terms and conditions of Plaintiff
16 and the other class members and aggrieved employees' employment for them to be their joint
17 employers.

18 16. Defendants directly hired and paid wages and benefits to Plaintiff and the other class
19 members and aggrieved employees.

20 17. Defendants continue to employ hourly paid and/or non-exempt employees within the
21 State of California.

22 18. At all relevant times, Defendants, and each of them, ratified each and every act or
23 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
24 the acts and omissions of each and all the other Defendants in proximately causing the damages herein
25 alleged.

26 19. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is
27 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
28 occurrences, and transactions alleged herein.

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1 25. Plaintiff reserves the right to establish additional subclasses as appropriate.

2 26. There is a well-defined community of interest in the litigation and the Class is easily
3 ascertainable.

4 27. The Class is so numerous that the individual joinder of all its members is impracticable.
5 While the exact number and identities of class members are unknown to Plaintiff at this time, the exact
6 numbers of class members and their identities can be ascertained through appropriate discovery from
7 records maintained by Defendants and their agents.

8 28. Common questions of fact and law exist as to all class members, which predominate
9 over any questions affecting only individual members of the Class. The common legal and factual
10 questions which do not vary from class member to class member, and which may be determined
11 without reference to the individual circumstances of any class member include, but are not limited to,
12 the following:

- 13 i. Whether Defendants had a policy and practice of failing to pay minimum wages to
14 Plaintiff and the other class members for all hours worked;
- 15 ii. Whether Defendants had a policy and practice of failing to pay overtime wages to
16 Plaintiff and the other class members for all overtime hours worked;
- 17 iii. Whether Defendants had a policy and practice of failing to provide meal periods to
18 Plaintiff and the other class members;
- 19 iv. Whether Defendants had a policy and practice of failing to provide rest periods to
20 Plaintiff and the other class members;
- 21 v. Whether Defendants failed to pay their hourly-paid and/or non-exempt employees in
22 the State of California for all hours worked, and for all missed, short, late, and/or
23 interrupted meal periods and rest breaks;
- 24 vi. Whether Defendants failed to timely pay all wages due to Plaintiff and the other class
25 members during their employment;
- 26 vii. Whether Defendants' failure to pay wages, without abatement or reduction, in
27 accordance with the California Labor Code, was willful;
- 28 viii. Whether Defendants failed to pay all wages due to Plaintiff and the other class members

1 within the required time upon their discharge or resignation;

2 ix. Whether Defendants failed to comply with wage reporting as required by the California
3 Labor Code; including, *inter alia*, section 226;

4 x. Whether Defendants failed to reimburse Plaintiff and the other class members for
5 necessary business-related expenses and costs;

6 xi. Whether Defendants' conduct was willful or reckless;

7 xii. Whether Defendants engaged in unfair business practices in violation of California
8 Business & Professions Code section 17200, *et seq.*;

9 xiii. The appropriate amount of damages, restitution, and/or monetary penalties resulting
10 from Defendants' violation of California law; and

11 xiv. Whether Plaintiff and the other class members are entitled to compensatory damages
12 pursuant to the California Labor Code.

13 29. Plaintiff's claims are typical of the claims of the Class, and Plaintiff's interests are
14 coincident with and not antagonistic to those of the other class members Plaintiff seeks to
15 represent. Plaintiff will fairly and adequately protect the interests of the members of
16 the Class. Plaintiff has retained attorneys experienced in the prosecution of class actions and Plaintiff
17 intends to prosecute this action vigorously.

18 30. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy since individual litigation of the claims of all class members is
20 impracticable. Even if every class member could afford individual litigation, the court system could
21 not. It would be unduly burdensome on the courts in which individual litigation of numerous cases
22 would proceed. Individualized litigation would also present the potential for varying, inconsistent or
23 contradictory judgments and would magnify the delay and expense to all parties and to the court
24 system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of
25 this action as a class action, with respect to some or all of the issues presented in this Complaint,
26 presents fewer management difficulties, conserves the resources of the parties and of the court system,
27 and protects the rights of each class member.

28 31. Certification of this lawsuit as a class action will advance public policy

objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

PAGA ALLEGATIONS

32. At all times set forth herein, PAGA applied to Plaintiff's employment with Defendants.

33. PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the California Labor & Workforce Development Agency ("LWDA") for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

34. Pursuant to PAGA, a civil action may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

35. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment with Defendants and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants and one of more of the alleged violations were committed against them.

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

(a) The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

(b) The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the

1 aggrieved employee by certified mail that it does not intend to investigate the alleged
2 violation within sixty (60) calendar days of the postmark date of the Employee's Notice.
3 Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty
4 five (65) calendar days of the postmark date of the Employee's Notice, the aggrieved
5 employee may commence a civil action pursuant to California Labor Code section 2699
6 to recover civil penalties in addition to any other penalties to which the employee may be
7 entitled.

8 37. On September 18, 2023, Plaintiff provided notice by electronic submission to the
9 LWDA and by certified mail to Defendants regarding the specific provisions of the Labor Code alleged
10 to have been violated, including the facts and theories to support the alleged violations, pursuant to
11 Labor Code section 2699.3. **A true and correct copy of the Employee's Notice is attached hereto**
12 **as Exhibit A.**

13 38. Plaintiff did not receive an LWDA Notice within sixty-five calendar days of providing
14 the Employee's Notice.

15 39. Therefore, the administrative prerequisites under California Labor Code section
16 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies for violations of
17 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197,
18 1197.1, 1198, 2800 and 2802 have been satisfied.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

21 **Failure to Pay Minimum Wage**

22 **(Against All Defendants and DOES 1 – 25)**

23 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
24 allegations in all preceding paragraphs.

25 41. California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage
26 for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to
27 employees, and the payment of a wage less than the minimum so fixed is unlawful. Plaintiff and the
28 other class members were frequently suffered or permitted to work "off-the-clock", such that they

1 were not paid minimum wage for all hours worked.

2 42. Such “off-the-clock” work that Plaintiff and class members were suffered and/or
3 permitted to work, and for which Plaintiff and class members did not receive minimum wage include
4 *inter alia*, requiring Plaintiff and class members to come in early and prior to clocking in to prepare
5 the workspace, clean tables and floors, and obtain task assignment; complete tasks for the morning
6 shift, such as taking out the trash, after clocking out; and work through meal and rest breaks due to
7 being understaffed.

8 43. Moreover, Defendants had a policy, practice and procedure of rounding employee time
9 such that Plaintiff and some or all class members were systematically unpaid and/or underpaid for
10 time worked over the course of their employment.

11 44. Accordingly, Defendants regularly failed to pay at least minimum wages to Plaintiff
12 and the other class members for all hours they worked in violation of California Labor Code sections
13 1194, 1197, and 1197.1.

14 45. Defendants knew or should have known that Plaintiff and class members were
15 performing such work “off-the-clock” because, among other things, Defendants’ management
16 witnessed, authorized, was made aware of, and/or required Plaintiff and class members to perform
17 such work.

18 46. Defendants’ failure to pay Plaintiff and the other class members the minimum wage as
19 required violates California Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections,
20 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage
21 compensation, as well as interest, costs, and attorney’s fees.

22 47. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class
23 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
24 and interest thereon.

25 **SECOND CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

27 **Unpaid Overtime**

28 **(Against All Defendants and DOES 1 – 25)**

1 48. Plaintiff incorporates herein by specific reference, as though fully set forth, the
2 allegations in all preceding paragraphs.

3 49. California Labor Code section 1198 and the applicable Industrial Welfare Commission
4 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a
5 rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the
6 number of hours worked by the person on a daily and/or weekly basis.

7 50. Specifically, the applicable IWC Wage Order provides that Defendants were required
8 to pay Plaintiff and the other class members at the rate of time-and-one-half for all hours worked in
9 excess of eight (8) hours in a day, in excess of forty (40) hours in a workweek and/or the first eight
10 (8) hours worked on the seventh consecutive day in a workweek.

11 51. The applicable IWC Wage Order further provides that Defendants were required to pay
12 Plaintiff and the other class members overtime compensation at a rate of two (2) times their regular
13 rate of pay for all hours worked in excess of twelve (12) hours in a day and/or for all hours worked in
14 excess of eight (8) hours on the seventh consecutive day in a workweek.

15 52. California Labor Code section 510 codifies the right to overtime compensation at one-
16 and-one half times the regular hourly rate for hours worked in excess of eight (8) hours in a day, forty
17 (40) hours in a week, or for the first eight (8) hours worked on the seventh day of work, and to overtime
18 compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day
19 or in excess of eight (8) hours in a day on the seventh day of work.

20 53. Plaintiff and the other class members regularly worked in excess of eight (8) hours in
21 a day, in excess of twelve (12) hours in a day, in excess of forty (40) hours in a week and/or seven (7)
22 consecutive days in a workweek. However, Defendants did not record Plaintiff and the other class
23 members’ actual hours worked and intentionally and willfully failed to pay all overtime wages owed
24 to Plaintiff and the other class members. Defendants’ failure to pay correct overtime wages included,
25 *inter alia*: (a) when the combined total of the off-the-clock work discussed *supra* and the on-the-clock
26 work exceed the number of hours that trigger the payment of overtime wages under Labor Code
27 sections 510 and 1198 and/or the applicable Wage Order; (b) when Defendants intentionally, willfully
28 and/or negligently mischaracterized overtime as straight time; (c) when Defendants assigned more

1 work than could reasonably be completed in a workday or workweek to Plaintiff and class members,
2 but refused to authorize the overtime necessary for them to complete the assigned work; and (d) when
3 Defendants failed to include all required wages and remuneration when calculating setting the
4 overtime rate.

5 54. Defendants' failure to pay Plaintiff and the other class members as outlined above
6 violates California Labor Code sections 510 and 1198 and the applicable Wage Order and is therefore
7 unlawful.

8 55. Pursuant to California Labor Code section 1194, Plaintiff and the other class members
9 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'
10 fees.

11 **THIRD CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512**

13 **Meal Break Violations**

14 **(Against All Defendants and DOES 1 – 25)**

15 56. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 57. California Labor Code sections 226.7 and 512(a) and the applicable Wage Order
18 govern Plaintiff and the other class members' employment by Defendants.

19 58. California Labor Code section 226.7 provides that no employer shall require an
20 employee to work during any meal period mandated by an applicable IWC Order.

21 59. The applicable IWC Wage Order and California Labor Code section 512(a) provide
22 that an employer may not require, cause, or permit an employee to work for a period of more than five
23 (5) hours per day without providing the employee with a meal period of not less than thirty (30)
24 minutes, except that if the total work period per day of the employee is not more than six (6) hours,
25 the meal period may be waived by mutual consent of both the employer and the employee.

26 60. The applicable IWC Wage Order and California Labor Code section 512(a) further
27 provides that an employer may not require, cause, or permit an employee to work a work period of
28 more than ten (10) hours per day without providing the employee with a second uninterrupted meal

1 period of not less than thirty (30) minutes, except if the total hours worked is no more than twelve (12)
2 hours, the second meal period may be waived by mutual consent of the employer and the employee
3 only if the first meal period was not waived.

4 61. Plaintiff and the other class members who were scheduled to work for shifts no longer
5 than six (6) hours, and who did not waive their legally mandated meal periods by mutual consent, were
6 required to work for periods longer than five (5) hours without an uninterrupted meal period of not
7 less than thirty (30) minutes.

8 62. Plaintiff and the other class members who were scheduled to work for shifts in excess
9 of ten (10) hours but no longer than twelve (12) hours, and who did not waive their legally-mandated
10 meal periods by mutual consent, were required to work for periods longer than ten (10) hours without
11 an uninterrupted meal period of not less than thirty (30) minutes.

12 63. Defendants intentionally and willfully required Plaintiff and the other class members
13 to work during meal periods and failed to compensate Plaintiff and the other class members for work
14 performed during meal periods. This includes, among other things, requiring Plaintiff and class
15 members to work through their lunch breaks, permitting and/or requiring Plaintiff and class members
16 to take late lunch breaks, permitting and/or requiring Plaintiff and class members to take short lunch
17 breaks, interrupting and/or allowing others to interrupt Plaintiff and class members during their lunch
18 breaks, failing to relieve Plaintiff and class members of all duties during their lunch breaks, and
19 restricting Plaintiff and class members from leaving the premises during their lunch breaks.

20 64. Further, because of Defendants' rounding policy, meal breaks were at times incorrectly
21 recorded as compliant, when in reality they were untimely and/or cut short.

22 65. During the relevant time period, Defendants failed to pay Plaintiff and the other class
23 members all meal period premiums due pursuant to California Labor Code section 226.7 and 512 and
24 the applicable Wage Order.

25 66. Defendants' conduct therefore violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7 and 512(a).

27 67. Pursuant to the applicable IWC Wage Order and California Labor Code section
28 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one additional

hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226.7

Rest Break Violations

(Against All Defendants and DOES 1 – 25)

68. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

69. California Labor Code section 226.7 and the applicable IWC Wage Order govern Plaintiff and the other class members' employment by Defendants.

70. 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.

71. 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 (3½) hours."

72. Defendants routinely required Plaintiff and the other class members to work three and one-half (3 ½) or more hours without authorizing or permitting a compliant ten (10) minute rest period per each four (4) hour period, or major fraction thereof, worked.

73. Moreover, Defendants willfully required, suffered and permitted Plaintiff and the other class members to work during what should have been their rest periods. Defendants also failed to relieve Plaintiff and the other class members of all duties for ten (10) minutes as required for compliant rest breaks.

74. As a result, Plaintiff worked through rest periods, took late rest periods, took interrupted rest periods, and/or took short rest periods, if at all.

75. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff and the other class members were entitled to recover from Defendants one (1)

1 additional hour of pay at their regular hourly rate of compensation for each workday that compliant
2 rest period(s) were not provided.

3 76. Defendants had no policy and/or practice to pay a premium when rest periods were
4 missed, short, late, and/or interrupted, or otherwise failed to comply with California law, and thus
5 Defendants failed to pay Plaintiff and the other class members the full rest period premium due to
6 them in violation of California Labor Code section 226.7 and the applicable IWC Wage Orders.

7 77. Pursuant to the applicable IWC Wage Orders and California Labor Code section
8 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional
9 hour of pay at their regular rate of compensation for each workday complaint rest period(s) were not
10 provided.

11 **FIFTH CAUSE OF ACTION**

12 **VIOLATION OF CALIFORNIA LABOR CODE §§ 204 AND 210**

13 **Failure to Timely Pay Wages During Employment**

14 **(Against All Defendants and DOES 1 – 25)**

15 78. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in all preceding paragraphs.

17 79. California Labor Code section 204 provides that all wages earned by any person in any
18 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
19 due upon termination of an employee, are due and payable between the 16th and 26th day of the month
20 during which the labor was performed.

21 80. California Labor Code section 204 provides that all wages earned by any person in any
22 employment between the 16th and the last day, inclusive, of any calendar month, other than those
23 wages due upon termination of an employee, are due and payable between the 1st and the 10th day of
24 the following month.

25 81. California Labor Code section 204 provides that all wages earned for labor in excess
26 of the normal work period shall be paid no later than the payday for the next regular payroll period.

27 82. As a result of the violations set forth in detail above (failure to pay overtime, failure to
28 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and

1 willfully failed to timely pay Plaintiff and other class members all wages due to them, within the period
2 permissible under California Labor Code section 204.

3 83. Plaintiff and other class members are entitled to recover all available remedies for
4 Defendant's violations of California Labor Code section 204, including statutory penalties pursuant to
5 Labor Code section 210(b).

6 **SIXTH CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE SECTION 226(a)**

8 **Failure to Provide Accurate Wage Statements**

9 **(Against All Defendants and DOES 1 – 25)**

10 84. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in all preceding paragraphs.

12 85. At all material times set forth herein, California Labor Code section 226(a) provides
13 that every employer shall furnish each of its employees an accurate itemized wage statement in writing,
14 including, but not limited to, the name and address of the legal entity that is the employer, total hours
15 worked, and all applicable hourly rates.

16 86. As a result of the violations set forth in detail above (failure to pay overtime, failure to
17 pay minimum wages, meal break violations and rest break violations), Defendants intentionally and
18 willfully failed to provide Plaintiff and the other class members with complete and accurate wage
19 statements. The deficiencies include, among other things, the failure to state all hours worked, the
20 failure to state the actual gross wages earned, the failure to include meal and rest break premiums, and
21 the failure to include correct rates of pay. Accordingly, Defendants violated California Labor Code
22 226(a).

23 87. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff
24 and the other class members have suffered injury and damage to their statutorily protected rights.

25 88. Specifically, Plaintiff and the other class members have been injured by Defendants'
26 intentional violation of California Labor Code section 226(a) because they were denied both their legal
27 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
28 California Labor Code section 226(a). In addition, because Defendants failed to provide the accurate

1 number of total hours worked on wage statements, Plaintiff and the other class members have been
2 prevented by Defendants from determining if all hours worked were paid and the extent of the
3 underpayment. Plaintiff had to file this lawsuit, and will further have to conduct discovery, reconstruct
4 time records, and perform computations in order to analyze whether in fact Plaintiff and the other class
5 members were paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur
6 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these costs
7 had Defendants provided the accurate number of total hours worked. This has also delayed Plaintiff's
8 ability to demand and recover the underpayment of wages from Defendants.

9 89. Plaintiff and the other class members are entitled to recover from Defendants the
10 greater of their actual damages caused by Defendants' failure to comply with California Labor Code
11 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000).

12 **SEVENTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

14 **Final Wages Not Timely Paid**

15 **(Against All Defendants and DOES 1 – 25)**

16 90. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in all preceding paragraphs.

18 91. Pursuant to California Labor Code sections 201, 202, and 203, Defendants are required
19 to timely pay all earned and unpaid wages to an employee who is discharged. California Labor Code
20 section 201 mandates that if an employer discharges an employee, the employee's wages accrued and
21 unpaid at the time of discharge are due and payable immediately. California Labor Code section 202
22 mandates that if an employee quits, his or her wages shall become due and payable not later than
23 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
24 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
25 quitting.

26 92. California Labor Code section 203 provides that if an employer willfully fails to pay,
27 in accordance with California Labor Code sections 201 and 202, any wages of an employee who is
28 discharged or who quits, the wages of the employee shall continue as a penalty from the due date

thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than thirty (30) days.

93. As a result of the violations set forth in detail above (failure to pay overtime, failure to pay minimum wages, meal break violations and rest break violations), at the time that Plaintiff and the other class members' employment with Defendants ended, Defendants knowingly and willfully failed to pay Plaintiff and the other class members all wages owed to them pursuant to California Labor Code sections 201 and 202, including, without limitation, overtime wages, minimum wages, meal period premium wages, and rest period premium wages, and all wages due to Plaintiff and class members as they became due, as required per California Labor Code sections 204.

94. As a result, Plaintiff and the other class members are entitled to all available statutory penalties, including the waiting time penalties provided in California Labor Code section 203, together with interest thereon, as well as other available remedies.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 2800 AND 2802

Failure to Reimburse Necessary Business Expenses

(Against All Defendants and DOES 1 – 25)

95. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

96. Pursuant to California Labor Code sections 2800 and 2802, an employer must reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her job duties or in direct consequence of his or her obedience to the directions of the employer.

97. Plaintiff and the other class members incurred necessary business-related expenses and costs that were not fully reimbursed by Defendants, including, but not limited to the purchase of shirts with the company's logo for work-related purposes.

98. Defendants intentionally and willfully failed to reimburse Plaintiff and the other class members for all necessary business-related expenses and costs. Plaintiff and the other class members are entitled to recover from Defendants their business-related expenses and costs incurred during the

1 course and scope of employment, plus interest accrued from the date on which Plaintiff and the other
2 class members incurred the necessary expenditures at the same rate as judgments in civil actions in
3 the State of California.

4 **NINTH CAUSE OF ACTION**

5 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET. SEQ.***

6 **Unfair and Unlawful Business Practices**

7 **(Against All Defendants and DOES 1 – 25)**

8 99. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in all preceding paragraphs.

10 100. Each and every one of Defendants' acts and omissions in violation of the California
11 Labor Code and/or the applicable IWC Wage Order as alleged herein, including but not limited to
12 Defendant's failure and refusal to pay overtime compensation, Defendant's failure and refusal to pay
13 minimum wages, Defendants' failure and refusal to provide required meal periods and/or pay meal
14 period premiums, Defendants' failure and refusal to provide required rest periods and/or pay the
15 required rest break premiums, Defendants' failure to timely pay wages at the correct rate during
16 employment, Defendants' failure and refusal to furnish accurate itemized wage statements,
17 Defendants' failure and refusal to reimburse business-related expenses, and Defendants' failure to
18 timely pay wages upon termination constitutes an unfair and unlawful business practice under
19 California Business and Professions Code § 17200 *et seq.*

20 101. Defendants' violations of California wage and hour laws constitute an unfair and
21 unlawful business practice because Defendants' aforementioned acts and omissions were done
22 repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff
23 and the other class members.

24 102. Defendants have avoided payment of overtime wages, minimum wages, meal period
25 premiums, rest period premiums, timely wages at the correct rate of pay, and other benefits as required
26 by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage
27 Order. Further, Defendants have failed to record, report, and pay the correct sums of assessment to
28 the state authorities under the California Labor Code and other applicable regulations.

103. As a result of Defendants' unfair and unlawful business practices, Defendants have reaped unfair and illegal profits during Plaintiff and the other class members' tenure at the expense of Plaintiff, the other class members, and members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to Plaintiff and the other class members.

104. Defendants' unfair and unlawful business practices entitle Plaintiff and the other class members to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendants account for, disgorge, and restore to Plaintiff and the other class members the wages and other compensation unlawfully withheld from them. Plaintiff and the other class members are entitled to restitution of all monies to be disgorged from Defendants in an amount according to proof at the time of trial.

TENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE §§ 2699, ET SEQ.

(Against All Defendants and DOES 1 – 25)

105. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in all preceding paragraphs.

106. PAGA expressly provides for a private right of action to recover civil penalties for violations of the Labor Code as follows: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code § 2699(a).

107. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

108. Plaintiff and the other hourly-paid, non-exempt employees are "Aggrieved Employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

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

- 3 (a) Violation of California Labor Code sections 510 and 1198 for failure to pay
4 overtime wages, as set forth more fully below;
- 5 (b) Violation of California Labor Code sections 1194, 1197, and 1197.1 for failure to
6 pay minimum wages, as set forth more fully below;
- 7 (c) Violation of California Labor Code sections 226.7 and 512(a) for failure to provide
8 legally required meal periods, as set forth more fully below;
- 9 (d) Violation of California Labor Code sections 226.7 and 512(a) for failure to pay
10 required meal period premiums, as set forth more fully below;
- 11 (e) Violation of California Labor Code section 226.7 for failure to provide legally
12 required rest periods, as set forth more fully below;
- 13 (f) Violation of California Labor Code section 226.7 for failure to pay required rest
14 period premiums, as set forth more fully below;
- 15 (g) Violation of California Labor Code section 204 for failure to timely pay wages to
16 Plaintiff and aggrieved employees during employment, as set forth more fully
17 before;
- 18 (h) Violation of California Labor Code sections 201, 202, and 203 for failure to pay all
19 wages at time of discharge from employment, as set forth more fully below;
- 20 (i) Violation of California Labor Code section 226(a) for failure to provide accurate
21 wage statements to Plaintiff and aggrieved employees, as set forth more fully
22 below;
- 23 (j) Violation of California Labor Code section 1174(d) for failure to keep complete
24 and accurate payroll records relating to Plaintiff and aggrieved employees, as set
25 forth more fully below; and
- 26 (k) Violation of California Labor Code sections 2800 and 2802 for failure to reimburse
27 Plaintiff and aggrieved employees for necessary business-related expenses, as set
28 forth more fully below.

110. Pursuant to PAGA, and in particular Labor Code sections 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for Plaintiff, all Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections set forth herein, including penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3, 1174.5, and 1197.1, penalties under the applicable IWC Wage Order, and any and all additional penalties and remedies as provided by the California Labor Code and/or other statutes.

111. Pursuant to California Labor Code section 2699(i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five (25%) to the Aggrieved Employees.

112. Plaintiff retained counsel to file this court action, and to assess and collect the civil penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees and costs pursuant to Labor Code §§ 210, 218.5, 2699(g)(1), and any other applicable statute.

PRAYER FOR RELIEF

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

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

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

7. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

8. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

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

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

11. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

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

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

14. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194;

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods, (including second meal periods) to Plaintiff and the other class members;

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

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

20. For premium wages pursuant to California Labor Code section 226.7(c);

- 1 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- 2 22. For reasonable attorneys' fees and costs of suit incurred herein;
- 3 23. For such other and further relief as the Court may deem just and proper.

4 **As to the Fourth Cause Action**

5 24. That the Court declare, adjudge and decree that Defendants violated California Labor

6 Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to

7 Plaintiff and the other class members;

8 25. That the Court make an award to Plaintiff and the other class members of one (1) hour

9 of pay at each employee's regular rate of compensation for each workday that a rest period was not

10 provided;

- 11 26. For all actual, consequential, and incidental losses and damages, according to proof;
- 12 27. For premium wages pursuant to California Labor Code section 226.7(c);
- 13 28. For pre-judgment interest on any unpaid wages from the date such amounts were due;
- 14 29. For such other and further relief as the Court may deem just and proper.

15 **As to the Fifth Cause of Action**

16 30. That the Court declare, adjudge and decree that Defendants violated California Labor

17 Code section 204 by willfully failing to pay all compensation owed at the time required by California

18 Labor Code section 204 to Plaintiff and the Class;

- 19 31. For statutory penalties pursuant to California Labor Code section 210;
- 20 32. For such other and further relief as the Court deems just and proper.

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

22 33. That the Court declare, adjudge and decree that Defendants violated the record keeping

23 provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff

24 and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

- 25 34. For actual, consequential and incidental losses and damages, according to proof;
- 26 35. For statutory penalties pursuant to California Labor Code section 226(e);
- 27 36. For injunctive relief to ensure compliance with this section, pursuant to
- 28 California Labor Code section 226(g);

37. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and the other class members no longer employed by Defendants;

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

40. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

41. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

42. For such other and further relief as the Court may deem just and proper.

As to the Eight Cause of Action

43. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

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

45. For the imposition of civil penalties and/or statutory penalties;

46. For punitive damages and/or exemplary damages according to proof at trial;

47. For reasonable attorneys' fees and costs of suit incurred herein; and

48. For such other and further relief as the Court may deem just and proper.

As to the Ninth Cause of Action

49. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code sections as to Plaintiff and the other class members: 510 and 1198 (by failing to pay overtime wages); 1194, 1197, and 1197.1 (by failing to pay minimum wages); 226.7 and 512(a) (by failing to provide meal and rest periods or compensation in lieu thereof); 204 (by failing to timely pay wages during employment); 226(a) (by failing to provide accurate wage statements); and 201,

202, and 203 (by failing to pay all wages owed upon termination); and 2800 and 2802 (by failing to reimburse business-related expenses);

50. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-judgment interest from the day such amounts were due and payable;

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

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

53. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, *et seq.*

As to the Tenth Cause of Action

54. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g), plus costs and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

55. For such other and further relief as the Court may deem proper.

DATED: November 27, 2023

BLACKSTONE LAW, APC

By: _____



Jonathan M. Genish, Esq.

Attorneys for Plaintiff

RIGOBERTO TECALIZ, individually and on behalf of others similarly situated and on behalf of other aggrieved employees

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DATED: November 27, 2023

By:

RIGOBERTO TECALIZ, individually and on behalf of others similarly situated and on behalf of other aggrieved employees

Exhibit A

September 18, 2023

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

RE: *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*

Dear Representative:

This office represents Rigoberto Tecaliz (“Claimant”) with respect to their claims under the California Labor Code against National Restaurant Inc. dba Black Bear Diner (including any and all affiliates, subsidiaries, parents, directors, and officers thereof) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant from approximately May 2021 to July 2023 as a non-exempt, hourly-paid employee. During his employment with Employers, Claimant was employed as a Server’s Assisant/Busboy at the Black Bear Diner located at 1025 Fletcher Parkway, El Cajon, CA 92020.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of themselves and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Orders”). The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and IWC Wage Orders require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and IWC Wage Orders further require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time period, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock. This off-the-clock work included, amongst other things, requiring Claimant and other Aggrieved Employees to come in early and prior to clocking in to prepare the workspace, clean tables and floors, and obtain task assignment; complete tasks for the morning shift, such as taking out the trash, after clocking out; and work through meal and rest breaks due to being understaffed. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. Moreover, the uncompensated work described herein was often performed when Claimant and other Aggrieved Employees had already worked eight (8) hours in a day and/or forty (40) hours in week resulting in a failure to pay overtime compensation. Finally, Employers failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers have failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Orders and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and

attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a). When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally-compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day, but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal periods, when provided, were oftentimes interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California

Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes rest for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. When an employer fails to authorize and permit a rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take legally-compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 226.7, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. 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. During the relevant time period, Employers have failed to timely pay all wages earned because Claimant and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described herein, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the

clock and meal and rest period premiums), and the correct rates of pay. The wage statements provided to Claimant and other Aggrieved Employees also failed to include the name of the legal entity that employed Claimant and the Aggrieved Employees. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

6. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimant and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Orders and California Labor Code sections 1198.5 and 1174(d).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

7. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The IWC Wage Orders require employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of shirts with the company's logo for work-related purposes.

Accordingly, Employers violated the IWC Orders and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

8. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION OF EMPLOYMENT

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 if an employee quits 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' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Aggrieved Employees were not paid all wages due to them within twenty-four (24) hours or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

9. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as an Aggrieved Employee, Claimant has standing, and intends, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an "aggrieved" employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. We hereby provide notice under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that we may allege a cause of action under PAGA against

Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, et seq., by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers' alleged violations within this time.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam Schimmel

Miriam Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

National Restaurant Inc. dba Black Bear Diner
43575 Mission Bl, #707
Fremont, CA 94539

National Restaurant Inc. dba Black Bear Diner
ATTN: Karan Gogri, Agent for Service of Proces
11035 Dutton Dr.
La Mesa, CA 91941

PROOF OF SERVICE

I, Victor Paz, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On November 27, 2023, I served a copy of the following document(s):

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE SECTIONS 2698. ET SEQ.

on the interested parties as follows:

National Restaurant, Inc.
c/o Karan Gogri, Agent for Service of Process
11035 Dutton Dr.
La Mesa, CA 91941

☒ **BY MAIL:** I enclosed the above documents in a sealed envelope with postage thereon fully prepaid and placed for collection and mailing on the above date in accordance with ordinary business practices. I am readily familiar with this firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service the same day in the ordinary course of business pursuant to Cal. Code Civ. Proc. § 1013(a).

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 27, 2023 at Beverly Hills, California.

Victor Paz

Victor Paz