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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

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

JUSTIN BLACK, individually and on behalf of
all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

SOCIAL TAP SAN DIEGO, LLC; SOCIAL
TAP VENTURA LLC; SOCIAL TAP
COLLEGE LLC; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00041495-CU-OE-CTL

Hon. Richard S. Whitney
Dept. 68

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wages
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff JUSTIN BLACK, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 SOCIAL TAP SAN DIEGO, LLC; SOCIAL TAP VENTURA LLC; SOCIAL TAP COLLEGE LLC;
5 and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action brought under California Code of Civil Procedure section 382 for
8 Defendants’ violations of the California Labor Code and Business and Professions Code.

9 2. Defendants underpaid the class members’ wages by failing to pay due premiums for
10 deficient meal and rest periods.

11 3. Defendants also maintained an unlawful meal period policy, uniformly applied across
12 all locations.

13 4. Defendants’ employment policies, practices, and payroll administration systems
14 enabled and facilitated these violations on a company-wide basis with respect to the class members.

15 **JURISDICTION & VENUE**

16 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
17 California Constitution as the causes of action are premised upon violations of California law.

18 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
19 the Superior Court.

20 7. This Court has jurisdiction over Defendants because, upon information and belief,
21 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
22 themselves to the California economy so as to render the exercise of jurisdiction over them by the
23 California courts consistent with traditional notions of fair play and substantial justice.

24 8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
25 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
26 of the alleged violations in this county.

PARTIES

A. Plaintiff Justin Black

9. Plaintiff Black is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2023 to August 2023. Plaintiff worked as a Busser and Bar Attendant.

10. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

11. Defendant Social Tap San Diego, LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

12. Defendant Social Tap Ventura LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

13. Defendant Social Tap College LLC is a California limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

14. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

15. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised

control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

16. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

17. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

18. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

19. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

20. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants,

1 which resulted in losses to the class. Proof of common unlawful business
2 practices, which Plaintiff experienced, will establish the right of the class to
3 recover on the causes of action alleged herein.

4 c. Adequacy: Plaintiff is an adequate class representative; will take all necessary
5 steps to protect the class members' interests adequately and fairly; has no
6 interest antagonistic to other class members; and is represented by attorneys
7 who have substantial experience prosecuting, defending, resolving, and
8 litigating wage and hour class, collective, and representative actions in
9 California state and federal courts.

10 d. Superiority: A class action is superior to other means for adjudicating this
11 dispute. Individual joinder is impractical. Class treatment will allow for
12 common issues to be resolved in a single forum, simultaneously, and without
13 duplication of effort and expense.

14 e. Public Policy Considerations: Certification of this lawsuit as a class action
15 advances the State of California's strong public interest in ensuring its
16 approximately millions of employed residents are properly paid the wages they
17 earned for the hours they worked. Class actions provide a mechanism for
18 enforcement of labor laws and allow for vindication of employee rights by
19 unnamed class members.

20 21. Common questions of law and fact as to the class members predominate over questions
21 affecting only individual members. The common questions of law and fact exist as to whether the
22 employment policies and practices formulated by Defendants and applied to the class members
23 constitute violations of California law.

24 **GENERAL ALLEGATIONS**

25 22. Plaintiff and class members worked for Defendants and were compensated on an hourly
26 basis as nonexempt employees.

27 23. Defendants maintained an unlawful, uniformly applied meal period policy. In
28 Defendants' handbook, and in practice, Defendants maintain that only employees working more than

1 six hours will be entitled to an unpaid, duty-free 30-minute meal break. However, California Law
2 dictates that nonexempt employees are to receive a 30-minute, uninterrupted, duty-free meal period
3 before their *fifth* hour of work. Defendants also did not produce any meal period waivers for Plaintiff
4 or class members. As a result of this unlawful policy, Plaintiff and class members suffered many
5 deficient meal periods.

6 24. For example, due to short staffing, customer rushes, and employee responsibilities,
7 Plaintiff and class members were often unable to timely take their due meal periods. Defendants also
8 required class members to preemptively check with their supervisors before taking rest or meal breaks,
9 which further impeded the class members' ability to take breaks on time. Over the course of two weeks
10 in June 2023, Plaintiff suffered deficient meal periods on June 2, 2023, June 3, 2023, June 4, 2023,
11 and June 10, 2023.

12 25. When Plaintiff and class members suffered these deficient meal periods, Defendants
13 did not consistently pay the employees their due meal period premiums. For example, in the pay period
14 of May 29, 2023, to June 11, 2023, including the four deficient meal periods above, Defendants only
15 paid Plaintiff two meal period premiums.

16 26. Plaintiff believes and alleges that due to Defendants' unlawful meal period policy,
17 Defendants habitually failed to pay due meal period premiums for deficient meal periods taken
18 between the fifth and sixth hour of work. Moreover, even when Plaintiff or class members suffered
19 deficient meal periods on shifts over six hours, Defendants did not consistently pay all due meal period
20 premiums.

21 27. Due to the same high-volume customer flow and short-staffing issues as above,
22 Plaintiff and class members also suffered deficient rest periods. Plaintiff believes and alleges that when
23 class members suffered deficient rest periods, Defendants did not pay rest period premiums, nor did
24 Defendants maintain any procedure for employees to request or receive rest period premiums.

25 28. Because of the aforementioned violations, Defendants failed to provide accurate
26 itemized wage statements that included all accurate gross or net wages, as Defendants failed to pay all
27 due premium wages.
28

1 29. These violations create derivative liability for failure to timely pay all wages owed each
2 payday or upon separation of employment.

3 **FIRST CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **Violation of Labor Code §§ 226.7 and 512**

6 30. All outside paragraphs of this Complaint are incorporated into this section.

7 31. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
8 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
9 meal period premiums in lieu thereof), and which further provide a private right of action for an
10 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
11 regular rate of compensation.

12 32. Defendants willfully failed in their affirmative obligation to consistently provide
13 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
14 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
15 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
16 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
17 sections of the applicable orders).

18 33. Further, Defendants willfully failed in their affirmative obligation to consistently pay
19 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
20 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
21 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
22 applicable orders).

23 34. Plaintiff and class members are entitled to recover the full amount of the meal period
24 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
25 the extent permitted by law.

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41. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

42. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

43. All outside paragraphs of this Complaint are incorporated into this section.

44. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

45. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

46. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

47. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for

1 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
2 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
3 Code section 226(e).

4 **FIFTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **Violation of Labor Code §§ 201 *et seq.***

7 48. All outside paragraphs of this Complaint are incorporated into this section.

8 49. This cause of action is brought by a waiting time subclass pursuant to Labor Code
9 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
10 employment, and which further provide a private right of action to recover statutory waiting time
11 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
12 wages.

13 50. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
14 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
15 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
16 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
17 Code sections 201 through 203 and the IWC Wage Orders.

18 51. Plaintiff and class members are entitled to recover a waiting time penalty for a period
19 of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

20 **SIXTH CAUSE OF ACTION**

21 **UNFAIR COMPETITION**

22 **Violation of Business and Professions Code §§ 17200 *et seq.***

23 52. All outside paragraphs of this Complaint are incorporated into this section.

24 53. Defendants have engaged and continue to engage in unfair and/or unlawful business
25 practices in the State of California in violation of California Business and Professions Code § 17200
26 by committing the foregoing wage and hour violations alleged throughout this Complaint.

27 54. Defendants' dependence on these unfair and/or unlawful business practices deprived
28 Plaintiff and continue to deprive other class members of compensation to which they are legally

entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

55. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

56. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

57. Plaintiff and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

58. All outside paragraphs of this Complaint are incorporated into this section.

59. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

1 a. All current and former non-exempt employees who worked for Defendants in
2 California at any time from one year prior to the postmark date of the initial
3 PAGA notice through date of trial.

4 60. Plaintiff reserves the right to amend, supplement, or add to this description of the
5 aggrieved employees, according to proof.

6 61. The State of California, via the Labor and Workforce Development Agency
7 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
8 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
9 files suit is always the real party in interest.”])

10 62. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
11 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
14 action brought by an aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Section 2699.3. “

16 63. Labor Code section 2699(f) provides: “For all provisions of this code except those for
17 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
18 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
19 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
20 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
21 each subsequent violation.”

22 64. Any allegations regarding violations of the IWC Wage Orders are enforceable as
23 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
24 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

25 65. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
26 penalties under the PAGA.

27 66. On or about **September 18, 2023**, Plaintiff paid the requisite PAGA filing fee and
28 provided written notice (by online electronic filing with the LWDA and by certified mail to

Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

67. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the “PAGA notice”).

68. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s written PAGA notice from the LWDA.

69. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

70. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

71. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- b. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- c. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- d. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- e. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- f. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

72. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

1 Dated: November 27, 2023

Ferraro Vega Employment Lawyers, Inc.

2 

3 Nicholas J. Ferraro

4 *Attorneys for Plaintiff Justin Black*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
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September 18, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Social Tap San Diego, LLC
815 J St. #202
San Diego, California 92101

Social Tap College LLC
815 J St. #202
San Diego, California, 92101

Social Tap Ventura LLC
815 J St. #202
San Diego, California 92101

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **JUSTIN BLACK** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

SOCIAL TAP SAN DIEGO, LLC; SOCIAL TAP VENTURA LLC; SOCIAL TAP COLLEGE LLC

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v.*

Reins International California, Inc. (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants collectively own and operate several pub restaurants and a catering service in California. Defendants employed Plaintiff during the PAGA Period at a San Diego location in the positions of Busser and Bar Attendant from about March 2023 to August 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Meal Period Premium Wages Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants violated California's Labor Code and IWC Wage Order meal period laws in several ways. First, Defendants maintained an unlawful, uniformly applied meal period policy across all locations. In the meal period section of Defendants' employee handbook, Defendants state that "[a]nyone working more than 6 hours will be entitled to an unpaid, duty-free 30-minute meal break." This policy is not compliant with California Law. As stated above, employee meal periods must begin **before the fifth hour of work**. Defendants did not produce any meal period waivers or handbook acknowledgements for Plaintiffs or aggrieved employees. Therefore, Defendants provide no exception or excuse for binding Plaintiff and aggrieved employees to a uniformly applied unlawful meal period policy. An excerpt of Defendant's handbook is below.

TEAM MEMBER SHIFT MEALS AND DISCOUNTS

Team Members are expected to eat before work, on their designated break, or after their shift. Team Members have a 50% discount on all food items during a scheduled shift. No alcoholic beverages will be served to a Team Member prior to or during a shift meal or rest break. A cashier needs to ring up any purchased items. The kitchen will not make food without a ticket, either before or after your shift or during your meal break. Shift meals may not be taken "to go." Your discount does NOT apply towards our kids meals or happy hour food.

Anyone working more than 6 hours will be entitled to an unpaid, duty-free 30-minute meal break. You need to check with a Manager before starting your meal break and if you decide to order food, be advised that you only have 30 minutes to eat.

Second, due to short staffing, customer rushes, and employee responsibilities, Plaintiff and aggrieved employees often suffered late, short, missed, and/or interrupted meal periods. Further, as seen in the policy above, when Plaintiff or the aggrieved employees needed to take a meal period, the employees had to first check with their managers, which further impeded the aggrieved employees' ability to take timely meal periods. Defendants' timekeeping records below display several of Plaintiff's deficient meal periods over the course of two weeks.

5/27/2023	05:05pm	5/27/2023	08:37pm	3.54	0	3.54	0	0 Busser	\$16.30	\$57.70
6/2/2023	05:03pm	6/2/2023	11:27pm	6.39	0	6.39	0	0 Busser	\$16.30	\$104.16
6/3/2023	04:58pm	6/3/2023	11:11pm	6.2	0	6.2	0	0 Busser	\$16.30	\$101.06
6/4/2023	02:57pm	6/4/2023	08:31pm	5.57	0	5.57	0	0 Busser	\$16.30	\$90.79
6/5/2023	04:00pm	6/5/2023	06:24pm	2.41	0	2.41	0	0 Busser	\$16.30	\$39.28
6/7/2023	10:03am	6/7/2023	02:01pm	3.97	0	3.97	0	0 Busser	\$16.30	\$64.71
6/10/2023	04:04pm	6/10/2023	10:26pm	6.37	0	6.37	0	0 Busser	\$16.30	\$103.83

Plaintiff's time records, showing a late meal period on June 2, 2023, June 3, 2023, June 4, 2023, and June 10, 2023.

Third, when Plaintiff and aggrieved employees suffered these deficient meal periods, Defendants did not consistently pay the employees their due meal period premiums. For example, in the pay period above, Plaintiff suffered four deficient meal periods. However, in the corresponding wage statement below, Defendants only paid Plaintiff two meal period premiums.

Earnings	Hours	Hourly Rate	Current	Year-To-Date	Taxes/Deductions	Current	Year-To-Date
Regular	30.91	16.3000	503.83	3,139.21	Federal Tax	56.07	223.46
Overtime			0.00	23.47	Soc. Sec. Tax	66.37	331.74
Cash Tips			534.00	2,139.00	Medicare Tax	15.52	77.58
Reimbursement			0.00	30.26	CA State Tax	15.21	62.67
Missed Breaks	2.00	16.3000	32.60	48.90	CA SDI	9.63	48.16
TOTALS		Gross Wages	Taxable Wages	Total Taxes & Other Deductions		Net Pay	
Current		1,070.43	1,070.43	162.80		373.63	
Year-To-Date		5,350.58	DIRECT DEPOSIT			373.63	

Plaintiff's wage statement from pay period May 29, 2023, to June 11, 2023.

Plaintiff believes and alleges that in addition to this general inconsistency, due to Defendants unlawful meal period policy, Defendants habitually did not pay due meal period premiums for deficient meal periods taken between the fifth and sixth hour of work. As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

For the same reasons as above regarding meal periods, Plaintiff and aggrieved employees suffered deficient rest periods. When Plaintiff or aggrieved employees suffered these deficient rest periods, Defendants did not pay the aggrieved employees their due premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants maintained unlawful meal and rest period policies, which led to several unpaid premium wages. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants maintained unlawful meal and rest period policies, which led to several unpaid premium wages. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Further, in violation of Labor Code section 226(a)(2), Defendants did not list the total hours worked in the pay period on Plaintiff and aggrieved employees' wage statements.

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records **Violation of Labor Code § 1174; IWC Wage Orders**

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Nicholas J. Ferraro

Cc Plaintiff Justin Black

Jake Snyder
jake@socialtapeatery.com