

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
David Arakelyan (SBN 337076)
d.arakelyan@d.law
880 E. Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Attorneys for Plaintiff JAMES D. GREENE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

JAMES D. GREENE, on behalf of himself and
all others similarly situated, and the general
public,

Plaintiffs,

v.

BLUEWATER GRILL REDONDO LP, a
California partnership; BLUEWATER
REDONDO BEACH, INC., a California
corporation; BLUEWATER SANTA
BARBARA, INC., a California corporation;
BLUEWATER SANTA BARBARA, LP, a
California Partnership; BLUEWATER
TEMECULA, INC., a California corporation;
BLUEWATER TEMECULA, LP, a California
partnership; BLUEWATER AVALON, INC.,
a California Corporation; BLUEWATER
AVALON, LP, a California partnership;
BLUEWATER CARLSBAD, INC., a
California corporation; BLUEWATER
CARLSBAD, LP, a California partnership;
BLUEWATER CORONADO, INC., a
California corporation; BLUEWATER
CORONADO, LP, a California partnership;
BLUEWATER PHOENIX, INC., a California
corporation; BLUEWATER PHOENIX, LP, a

Case No. **24STCV00295**

COMPLAINT FOR:

1. Civil Penalties (Lab. Code §§ 2698 *et seq.*)

1 California partnership; BLUE WATER
2 NEWPORT BEACH, INC., a California
3 corporation; BLUEWATER GRILL, an entity
4 of unknown form; AVALON, an entity of
5 unknown form; BOATHOUSE, an entity of
6 unknown form; EL GALLEON, an entity of
7 unknown form and DOES 1 through 50,
8 inclusive,

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Defendants.

1 Plaintiff JAMES D. GREENE (“Plaintiff”), on behalf of herself, all other aggrieved
2 employees, the State of California, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against Defendants BLUEWATER GRILL
5 REDONDO LP, a California partnership; BLUEWATER REDONDO BEACH, INC., a California
6 corporation; BLUEWATER SANTA BARBARA, INC., a California corporation; BLUEWATER
7 SANTA BARBARA, LP, a California Partnership; BLUEWATER TEMECULA, INC., a California
8 corporation; BLUEWATER TEMECULA, LP, a California partnership; BLUEWATER AVALON,
9 INC., a California Corporation; BLUEWATER AVALON, LP, a California partnership;
10 BLUEWATER CARLSBAD, INC., a California corporation; BLUEWATER CARLSBAD, LP, a
11 California partnership; BLUEWATER CORONADO, INC., a California corporation; BLUEWATER
12 CORONADO, LP, a California partnership; BLUEWATER PHOENIX, INC., a California
13 corporation; BLUEWATER PHOENIX, LP, a California partnership; BLUE WATER NEWPORT
14 BEACH, INC., a California corporation; BLUEWATER GRILL, an entity of unknown form;
15 AVALON, an entity of unknown form, BOATHOUSE, an entity of unknown form; EL GALLEON,
16 an entity of unknown form and DOES 1 through 50, inclusive, (collectively referred to as
17 “Defendants”) for alleged violations of the California Labor Code. As set forth below, Plaintiff alleges
18 that Defendants have:

- 19 (1) failed to pay him and all other Aggrieved Employees overtime wages at the
20 correct rate;
- 21 (2) failed to pay them double time wages at the correct rate;
- 22 (3) failed to pay them overtime and/or double time wages by failing to include all
23 applicable remuneration in calculating the regular rate of pay;
- 24 (4) failed to provide them with meal periods;
- 25 (5) failed to provide them with rest periods;
- 26 (6) failed to pay them premium wages for missed meal and rest periods;
- 27 (7) failed to reimburse them for necessary business-related expenses;
- 28 (8) failed to pay them wages for off the clock work;

1 (9) failed to provide them with accurate written wage statements; and

2 (10) failed to pay them all of their final wages following separation of employment.

3 2. Based on these alleged Labor Code violations, Plaintiff now brings this representative
4 action for civil penalties, on behalf of herself, all other aggrieved employees, the State of California,
5 and the general public.

6 **JURISDICTION AND VENUE**

7 3. This Court has subject matter jurisdiction to hear this case because the civil penalties
8 sought by Plaintiff for Defendants' conduct exceeds the minimal jurisdiction of the Superior Court of
9 the State of California.

10 4. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure §§
11 393(a), 395(a), and 395.5 in that liability arose in this county because at least some of the transactions
12 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
13 maintains offices, transacts business, and/or has an agent therein.

14 5. Venue is proper in Los Angeles County because Defendants' have at all times alleged
15 herein, conducted business in Los Angeles County and throughout California. As such, venue is
16 proper in any county in California.

17 **PARTIES**

18 6. Plaintiff JAMES D. GREENE is, and at all relevant times mentioned herein, an
19 individual residing in the State of California.

20 7. Plaintiff is informed and believes, and thereupon alleges that Defendant
21 BLUEWATER GRILL REDONDO LP is, and at all relevant times mentioned herein, a California
22 partnership doing business in the State of California.

23 8. Plaintiff is informed and believes, and thereupon alleges that Defendant
24 BLUEWATER REDONDO BEACH, INC. is, and at all relevant times mentioned herein, a California
25 corporation doing business in the State of California.

26 9. Plaintiff is informed and believes, and thereupon alleges that Defendant
27 BLUEWATER SANTA BARBARA, INC. is, and at all relevant times mentioned herein, a California
28 corporation doing business in the State of California.

1 10. Plaintiff is informed and believes, and thereupon alleges that Defendant
2 BLUEWATER SANTA BARBARA LP is, and at all relevant times mentioned herein, a California
3 partnership doing business in the State of California.

4 11. Plaintiff is informed and believes, and thereupon alleges that Defendant
5 BLUEWATER TEMECULA, INC. is, and at all relevant times mentioned herein, a California
6 corporation doing business in the State of California.

7 12. Plaintiff is informed and believes, and thereupon alleges that Defendant
8 BLUEWATER TEMECULA LP is, and at all relevant times mentioned herein, a California
9 partnership doing business in the State of California.

10 13. Plaintiff is informed and believes, and thereupon alleges that Defendant
11 BLUEWATER AVALON, INC. is, and at all relevant times mentioned herein, a California
12 corporation doing business in the State of California.

13 14. Plaintiff is informed and believes, and thereupon alleges that Defendant
14 BLUEWATER AVALON LP is, and at all relevant times mentioned herein, a California partnership
15 doing business in the State of California.

16 15. Plaintiff is informed and believes, and thereupon alleges that Defendant
17 BLUEWATER CARLSBAD, INC. is, and at all relevant times mentioned herein, a California
18 corporation doing business in the State of California.

19 16. Plaintiff is informed and believes, and thereupon alleges that Defendant
20 BLUEWATER CARLSBAD LP is, and at all relevant times mentioned herein, a California
21 partnership doing business in the State of California.

22 17. Plaintiff is informed and believes, and thereupon alleges that Defendant
23 BLUEWATER CORONADO, INC. is, and at all relevant times mentioned herein, a California
24 corporation doing business in the State of California.

25 18. Plaintiff is informed and believes, and thereupon alleges that Defendant
26 BLUEWATER CORONADO LP is, and at all relevant times mentioned herein, a California
27 partnership doing business in the State of California.

28 19. Plaintiff is informed and believes, and thereupon alleges that Defendant

1 BLUEWATER PHOENIX, INC. is, and at all relevant times mentioned herein, a California
2 corporation doing business in the State of California.

3 20. Plaintiff is informed and believes, and thereupon alleges that Defendant
4 BLUEWATER PHOENIX LP is, and at all relevant times mentioned herein, a California partnership
5 doing business in the State of California.

6 21. Plaintiff is informed and believes, and thereupon alleges that Defendant BLUE
7 WATER NEWPORT BEACH, INC. is, and at all relevant times mentioned herein, a California
8 corporation doing business in the State of California.

9 22. Plaintiff is informed and believes, and thereupon alleges that Defendant
10 BLUEWATER GRILL, is, and at all relevant times mentioned herein, an entity of unknown form
11 doing business in the State of California.

12 23. Plaintiff is informed and believes, and thereupon alleges that Defendant AVALON, is,
13 and at all relevant times mentioned herein, an entity of unknown form doing business in the State of
14 California.

15 24. Plaintiff is informed and believes, and thereupon alleges that Defendant
16 BOATHOUSE, is, and at all relevant times mentioned herein, an entity of unknown form doing
17 business in the State of California.

18 25. Plaintiff is informed and believes, and thereupon alleges that Defendant EL
19 GALLEON, is, and at all relevant times mentioned herein, an entity of unknown form doing business
20 in the State of California.

21 26. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
22 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
23 will amend this Complaint to allege the true names and capacities of the DOE defendants when
24 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
25 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
26 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
27 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
28 defendants when ascertained.

27. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, joint employers, owners, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of such relationship and with the full knowledge, consent and ratification by such other defendants.

28. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and conspired with one another, and aided and abetted one another to accomplish the occurrences, acts and omissions alleged herein.

GENERAL ALLEGATIONS

29. Plaintiff worked for Defendants during the relevant time period and an hourly, non-exempt employee.¹ Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees”)

30. Defendants had a common policy and practice of systemically failing to pay Plaintiff and Aggrieved Employees proper wages and overtime for all hours worked, at the proper rates of pay.

31. Plaintiff and the Aggrieved Employees were not paid all wages earned as Defendants directed, permitted, or otherwise encouraged Plaintiff and Aggrieved Employees to perform off-the-clock work.

32. Specifically, Plaintiff and the Aggrieved Employees were systemically required to arrive to work early and begin conducting work activities before clocking in, at Defendants' express instruction. Further, Defendants required the Aggrieved Employees to work after clocking out, daily. Defendants also required the Aggrieved Employees to report via cellphone off-the-clock.

¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

1 Additionally, the Aggrieved Employees were required to perform work activities during unpaid meal
2 periods. Defendants failed to track these off-the-clock hours and pay wages for them. The forgoing
3 and uncompensated working time was under the direction and control of Defendants, for which no
4 wages were paid.

5 33. As a result of performing off-the-clock work that was directed, permitted, or otherwise
6 encouraged by Defendants, Plaintiff and the Aggrieved Employees should have been paid for this
7 time. Instead, Defendants only paid Plaintiff and the Aggrieved Employees based on the time they
8 were clocked in for their shifts and did not pay Plaintiff and the Aggrieved Employees for any of the
9 time spent working off-the-clock.

10 34. Defendants knew or should have known that Plaintiff and the Aggrieved Employees
11 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
12 Aggrieved Employees for these hours.

13 35. Defendants were aware of this practice and directed, permitted, or otherwise
14 encouraged Plaintiff and the Aggrieved Employees to perform off-the-clock work.

15 36. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved
16 Employees were not paid for all hours worked.

17 37. The uncompensated time above caused Plaintiff and the other Aggrieved Employees
18 to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and the
19 other Aggrieved Employees to overtime wages which were never paid.

20 38. Defendants had a common policy and practice of systemically denying Plaintiff and
21 the Aggrieved Employees the opportunity to take meal periods in compliance with the California
22 Law. Specifically, Plaintiff and the Aggrieved Employees were prohibited from leaving the work
23 premises during meal periods, when such meal periods were taken. Additionally, due to understaffing,
24 heavy workloads, as well as the pre-shift duties discussed herein, Plaintiff and the Aggrieved
25 Employees were denied the opportunity to take timely meal periods prior to the completion of their
26 fifth hour of work. Furthermore, Plaintiff and the Aggrieved Employees were not relieved of all work
27 duties during unpaid meal periods and were required to keep working during meal breaks.

28 39. Plaintiff and the other Aggrieved Employees were not provided with meal periods of

1 at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
2 scheduling each meal period as part of each work shift; (2) no formal written meal policy that
3 encouraged employees to take their meal periods or that advised Plaintiff and the other Aggrieved
4 Employees of their meal and rest period rights; and (3) Defendants' practice of requiring Plaintiff and
5 the other Aggrieved Employees to remain on the premises during their meal periods; and (4)
6 Defendants' practice of requiring the Aggrieved Employees to continue working through their meal
7 periods due to the excessive workload. Defendants further failed to provide the Aggrieved Employees
8 with a second meal break for shifts longer than ten (10) hours.

9 40. Plaintiff and the other Aggrieved Employees were not provided with rest periods of at
10 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
11 Defendants' policy of not scheduling each rest period as part of each work shift, including second
12 rest breaks for shifts of six (6) hours or more and third rest break for shifts of ten (10) hours or more;
13 (2) no formal compliant written rest period policy that encouraged employees to take their rest
14 periods, or that properly advised Plaintiff and the other Aggrieved Employees of their rest period
15 rights; (3) Defendants' policy and practice of requiring Plaintiff and the other Aggrieved Employees
16 to remain on the premises during their rest breaks; (4) Defendants' policy and practice of requiring
17 Plaintiff and the other Aggrieved Employees to continue working through their rest breaks due to the
18 excessive workload.

19 41. Additionally, and as discussed above, Defendants failed to pay Plaintiff and the other
20 Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and
21 rest period denied.

22 42. Plaintiff and the Aggrieved Employees incurred necessary business-related expenses
23 and costs. Specifically, Plaintiff and Aggrieved Employees were required to use a personal cell
24 phone for communication regarding staffing and on the clock for work-related activities.
25 Defendants maintained a policy or practice of not reimbursing Plaintiff and the Aggrieved
26 Employees for all necessary business expenses.

27 43. Plaintiff is informed and believes that, at all relevant times during the applicable
28 limitations period, Defendants have failed to timely pay the other Aggrieved Employees all of their

1 final wages in accordance with the Labor Code.

2 44. Plaintiff and the other Aggrieved Employees were not provided with accurate wage
3 statements as mandated by law pursuant to Labor Code § 226. Specifically, Defendants failed to issue
4 wage statements as “a detachable part of the check, draft, or voucher paying the employee’s wages,
5 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”
6 Additionally, the wage statements issued to Plaintiff and the other Aggrieved Employees were not
7 recorded in “ink or other indelible form.”

8 45. Defendants failed to comply with Labor Code § 226(a)(1) as “gross wages earned”
9 were not accurately reflected in that: all hours worked, including overtime, were not included.

10 46. Defendants failed to comply with Labor Code § 226(a)(2) as “total hours worked by
11 the employee” were not accurately reflected in that: all hours worked, including overtime, were not
12 included.

13 47. Defendants failed to comply with Labor Code § 226(a)(5) as “net wages earned” were
14 not accurately reflected in that: all hours worked, including overtime, were not included.

15 48. Defendants failed to comply with Labor Code § 226(a)(9) as “all applicable hourly
16 rates in effect during the pay period and the corresponding number of hours worked at each hourly
17 rate by the employee” were not accurately reflected in that: all hours worked, including overtime,
18 were not included.

19 **FIRST CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab. Code §§ 2698 *et seq.*)**

22 **(Plaintiff Against All Defendants)**

23 49. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

24 50. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
25 fully alleged herein.

26 51. At all relevant times, Plaintiff and the other Aggrieved Employees have been non-
27 exempt employees of Defendant entitled to the full meal period protections of both the Labor Code
28 and the applicable Industrial Welfare Commission Wage Order.

1 52. Labor Code § 512 and § 11 of the applicable Industrial Welfare Commission Wage
2 Order impose an affirmative obligation on employers to provide non-exempt employees with
3 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of five hours,
4 and to provide them with two uninterrupted, duty-free meal periods of at least thirty minutes for each
5 work period of ten hours.

6 53. Labor Code § 226.7 and § 11 of the applicable Industrial Welfare Commission Wage
7 Order (“Wage Order”) both prohibit employers from requiring employees to work during required
8 meal periods and require employers to pay non-exempt employees an hour of premium wages on each
9 workday that the employee is not provided with the required meal period.

10 54. Compensation for missed meal periods constitutes wages within the meaning of Labor
11 Code § 200.

12 55. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate
13 the applicable Wage Order.

14 56. Section 11 of the applicable Wage Order states:

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

26 57. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
27 agreement. Plaintiff is informed and believes that, at all relevant times, the other Aggrieved
28 Employees were not subject to valid on-duty meal period agreements with Defendants.

29 58. Plaintiff alleges that, at all relevant times during the applicable limitations period,
30 Defendants maintained a policy or practice of not providing Plaintiff and the other Aggrieved
31 Employees with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
32 hour work period, as required by Labor Code § 512 ad the applicable Wage Order. Plaintiff and the
33 other Aggrieved Employees were required to perform work during their unpaid meal periods which

1 they were systemically denied.

2 59. Additionally, Defendants implemented a common policy and practice requiring
3 Plaintiff and the other Aggrieved Employees to perform work-related duties during unpaid meal
4 periods, which they were systemically denied. Plaintiff and the other Aggrieved Employees were
5 never paid wages for these hours worked.

6 60. Defendants had a common policy and practice of systemically denying Plaintiff and
7 the Aggrieved Employees the opportunity to take meal periods in compliance with the California
8 Law. Specifically, Plaintiff and the Aggrieved Employees were prohibited from leaving the work
9 premises during meal periods, when such meal periods were taken. Additionally, due to understaffing,
10 heavy workloads, as well as the pre-shift duties discussed herein, Plaintiff and the Aggrieved
11 Employees were denied the opportunity to take timely meal periods prior to the completion of their
12 fifth hour of work. Furthermore, Plaintiff and the Aggrieved Employees were not relieved of all work
13 duties during unpaid meal periods and were required to keep working during meal breaks.

14 61. Plaintiff and the other Aggrieved Employees were not provided with meal periods of
15 at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
16 scheduling each meal period as part of each work shift; (2) no formal written meal policy that
17 encouraged employees to take their meal periods or that advised Plaintiff and the other Aggrieved
18 Employees of their meal and rest period rights; and (3) Defendants' practice of requiring Plaintiff and
19 the other Aggrieved Employees to remain on the premises during their meal periods; and (4)
20 Defendants' practice of requiring the Aggrieved Employees to continue working through their meal
21 periods due to the excessive workload. Defendants further failed to provide the Aggrieved Employees
22 with a second meal break for shifts longer than ten (10) hours.

23 62. Plaintiff alleges that, at all relevant times during the applicable limitations period,
24 Defendants maintained a policy or practice of failing to pay premium wages to the other Aggrieved
25 Employees when they worked five (5) hours without clocking out for any meal period.

26 63. Plaintiff alleges that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of not providing Plaintiff and the other Aggrieved
28 Employees with a second meal period when they worked shifts of ten or more hours and failed to pay

1 them premium wages as required by Labor Code 512 and the applicable Wage Order.

2 64. At all relevant times, Defendants failed to pay Plaintiff and the other Aggrieved
3 Employees additional premium wages, and/or were not paid premium wages at the employees'
4 regular rates of pay when required meal periods were not provided.

5 65. Section 12 of the applicable Wage Order imposes an affirmative obligation on
6 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
7 minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the
8 middle of each work period insofar as practicable.

9 66. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
10 from requiring employees to work during required rest periods and require employers to pay non-
11 exempt employees an hour of premium wages at the employees' regular rates of pay, on each workday
12 that the employee is not provided with the required rest period(s).

13 67. Compensation for missed rest periods constitutes wages within the meaning of Labor
14 Code § 200.

15 68. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate
16 the Wage Order.

17 69. Plaintiff alleges that, at all relevant times during the applicable limitations period,
18 Defendants maintained a policy or practice of not providing Plaintiff and the other Aggrieved
19 Employees with net rest period of at least ten uninterrupted minutes for each four hour work period,
20 or major fraction thereof, as required by the applicable Wage Order.

21 70. Plaintiff and the other Aggrieved Employees were not provided with rest periods of at
22 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
23 Defendants' policy of not scheduling each rest period as part of each work shift, including second
24 rest breaks for shifts of six (6) hours or more and third rest break for shifts of ten (10) hours or more;
25 (2) no formal compliant written rest period policy that encouraged employees to take their rest
26 periods, or that properly advised Plaintiff and the other Aggrieved Employees of their rest period
27 rights; (3) Defendants' policy and practice of requiring Plaintiff and the other Aggrieved Employees
28 to remain on the premises during their rest breaks; (4) Defendants' policy and practice of requiring

1 Plaintiff and the other Aggrieved Employees to continue working through their rest breaks due to the
2 excessive workload.

3 71. At all relevant times, Defendants failed to pay Plaintiff and the other Aggrieved
4 Employees additional premium wages when required rest periods were not provided.

5 72. Additionally, and as discussed above, Defendants failed to pay Plaintiff and the other
6 Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and
7 rest period denied.

8 73. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
9 which an employee is subject to the control of the employer and includes all the time the employee is
10 suffered or permitted to work, whether or not required to do so.”

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

14 75. Labor Code § 1194 invalidates any agreement between an employer and an employee
15 to work for less than the minimum or overtime wage required under the applicable Wage Order.

16 76. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages in
17 amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
18 underlying unpaid minimum wages and interest thereon.

19 77. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
20 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
21 period.

22 78. Labor Code § 1197.1 provides that it is unlawful for any employer or any other person
23 acting either individually or as an officer, agent, or employee of another person, to pay an employee,
24 or cause an employee to be paid, less than the applicable minimum wage.

25 79. Labor Code § 1198 makes it unlawful for employers to employ employees under
26 conditions that violate the applicable Wage Order.

27 80. Labor Code § 204 requires employers to pay non-exempt employees their earned
28 wages for the normal work period at least twice during each calendar month on days the employer

1 designates in advance and to pay non-exempt employees their earned wages for labor performed in
2 excess of the normal work period by no later than the next regular payday.

3 81. Labor Code § 223 makes it unlawful for employers to pay their employees lower
4 wages than required by contract or statute while purporting to pay them legal wages.

5 82. Labor Code § 510 and § 3 of the applicable Wage Order require employees to pay
6 non-exempt employees overtime wages of no less than one and one-half times their respective regular
7 rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in excess
8 of forty hours in one workweek, and/or for the first eight hours worked on the seventh consecutive
9 day of one workweek.

10 83. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to pay
11 non-exempt employees overtime wages of no less than two times their respective regular rates of pay
12 for all hours worked in excess of twelve hours in one workday and for all hours worked in excess of
13 eight hours on a seventh consecutive workday during the workweek.

14 84. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
15 centrally devised policies and practices to her and the other Aggrieved Employees with respect to
16 working conditions and compensation arrangements.

17 85. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and the other
18 Aggrieved Employees for all time worked, including but not limited to, overtime hours at statutory
19 and/or agreed rates. Plaintiff and the other Aggrieved Employees were not paid proper wages and
20 overtime for all hours worked, at the proper rates of pay.

21 86. Plaintiff and the Aggrieved Employees were not paid all wages earned as Defendants
22 directed, permitted, or otherwise encouraged Plaintiff and Aggrieved Employees to perform off-the-
23 clock work.

24 87. Specifically, Plaintiff and the Aggrieved Employees were systemically required to
25 arrive to work early and begin conducting work activities before clocking in, at Defendants' express
26 instruction. Further, Defendants required the Aggrieved Employees to work after clocking out, daily.
27 Defendants also required the Aggrieved Employees to report via cellphone off-the-clock.
28 Additionally, the Aggrieved Employees were required to perform work activities during unpaid meal

1 periods. Defendants failed to track these off-the-clock hours and pay wages for them. The forgoing
2 and uncompensated working time was under the direction and control of Defendants, for which no
3 wages were paid.

4 88. As a result of performing off-the-clock work that was directed, permitted, or otherwise
5 encouraged by Defendants, Plaintiff and the Aggrieved Employees should have been paid for this
6 time. Instead, Defendants only paid Plaintiff and the Aggrieved Employees based on the time they
7 were clocked in for their shifts and did not pay Plaintiff and the Aggrieved Employees for any of the
8 time spent working off-the-clock.

9 89. Defendants knew or should have known that Plaintiff and the Aggrieved Employees
10 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
11 Aggrieved Employees for these hours.

12 90. The uncompensated time above caused Plaintiff and the other Aggrieved Employees
13 to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and the
14 other Aggrieved Employees to overtime wages which were never paid.

15 91. Defendants implemented a common policy and practice requiring Plaintiff and the
16 other Aggrieved Employees to perform work-related duties during unpaid meal periods, which they
17 were systemically denied. Plaintiff and the other Aggrieved Employees were never paid wages for
18 these meal-period hours worked. As such, Plaintiff and the other Aggrieved Employees were not paid
19 proper wages and overtime for all hours worked, at the proper rates of pay. Plaintiff and the other
20 Aggrieved Employees were consistently required to work in excess of eight (8) hours a day and/or
21 forty (40) hours a week, entitling Plaintiff and the other Aggrieved Employees to overtime wages,
22 which they were systemically denied.

23 92. Labor Code § 226(a) states:

24 An employer, semimonthly or at the time of each payment of wages, shall
25 furnish to his or her employee, either as a detachable part of the check, draft,
26 or voucher paying the employee's wages, or separately if wages are paid by
27 personal check or cash, an accurate itemized statement in writing showing (1)
28 gross wages earned, (2) total hours worked by the employee, except as
provided in subdivision (j), (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)

1 the inclusive dates of the period for which the employee is paid, (7) the name
2 of the employee and only the last four digits of his or her social security number
3 or an employee identification number other than a social security number, (8)
4 the name and address of the legal entity that is the employer and, if the
5 employer is a farm labor contractor, as defined in subdivision (b) of Section
6 1682, the name and address of the legal entity that secured the services of the
7 employer, and (9) all applicable hourly rates in effect during the pay period
8 and the corresponding number of hours worked at each hourly rate by the
9 employee and, beginning July 1, 2013, if the employer is a temporary services
10 employer as defined in Section 201.3, the rate of pay and the total hours
11 worked for each temporary services assignment. The deductions made from
12 payment of wages shall be recorded in ink or other indelible form, properly
13 dated, showing the month, day, and year, and a copy of the statement and the
14 record of the deductions shall be kept on file by the employer for at least three
15 years at the place of employment or at a central location within the State of
16 California. For purposes of this subdivision, 'copy' includes a duplicate of the
17 itemized statement provided to an employee or a computer-generated record
18 that accurately shows all of the information required by this subdivision.

11 93. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the
12 "detachable part of the check" provision and the "accurate itemized statement in writing" provision
13 of Labor Code § 226(a) by allowing for electronic wage statements so long as each employee retains
14 the right to elect to receive a written paper stub or record and that those who are provided with
15 electronic wage statements retain the ability to easily access the information and convert the electronic
16 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006.)

17 94. Plaintiff is informed and believes that, at all relevant times during the applicable
18 limitations period, Defendants have failed to provide her and the other Aggrieved Employees with
19 written wage statements as described above. Additionally, the wage statements issued to Plaintiff and
20 the other Aggrieved Employees failed to account for the unpaid minimum wages, overtime, and
21 premium pay wages described above.

22 95. Plaintiff is informed and believes that Defendants' failure to provide her and the other
23 Aggrieved Employees with accurate written wage statements were intentional in that Defendants have
24 the ability to provide them with accurate wage statements but have intentionally provided them with
25 written wage statements that Defendants have known do not comply with Labor Code § 226(a).

26 96. Labor Code section 2802(a) states:

27 An employer shall indemnify his or her employee for all necessary expenditures or
28 losses incurred by the employee in direct consequence of the discharge of his or her
duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them to
2 be unlawful.

3 97. At all relevant times during the applicable limitations period, Plaintiff and the
4 Aggrieved Employees incurred necessary business-related expenses and costs, including but not
5 limited to, the use of personal cell phones for work-related activities.

6 98. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
7 by Defendants was insufficient to indemnify Plaintiff and Aggrieved Employees for all necessary
8 expenses incurred in the discharge of their duties.

9 99. At all relevant times during the applicable limitations period, Defendants required
10 Plaintiff and the Aggrieved Employees to pay for expenses and/or losses caused by Defendants' want
11 of ordinary care. Defendants failed to indemnify Plaintiff and Aggrieved Employees for all such
12 expenditures.

13 100. Plaintiff and the Aggrieved Employees incurred necessary business-related expenses
14 and costs. Specifically, Plaintiff and the Aggrieved Employees were required to use a personal cell
15 phone for communication regarding staffing and on the clock for work-related activities. Defendants
16 maintained a policy or practice of not reimbursing Plaintiff and the Aggrieved Employees for all
17 necessary business expenses.

18 101. At all relevant times, Plaintiff and the other Aggrieved Employees have been entitled,
19 upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid
20 before termination or resignation.

21 102. At all relevant times, pursuant to Labor Code § 201, employees who have been
22 discharged have been entitled to payment of all final wages immediately upon termination.

23 103. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
24 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of all
25 final wages at the time of resignation.

26 104. Plaintiff is informed and believes that, at all relevant times during the applicable
27 limitations period, Defendants have failed to timely pay the other Aggrieved Employees all of their
28 final wages in accordance with the Labor Code.

1 105. Plaintiff is informed and believes that, at all relevant times during the applicable
2 limitations period, Defendants have maintained a policy or practice of paying Plaintiff and the other
3 Aggrieved Employees their final wages without regard to the requirements of Labor Code §§ 201 or
4 202 by failing to timely pay them all final wages.

5 106. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
6 timely pay all final wages to her and the other Aggrieved Employees have been willful in that
7 Defendants have the ability to pay final wages in accordance with Labor Code §§ 201 and/or 202 but
8 have intentionally adopted policies or practices that are incompatible with those requirements.

9 107. Plaintiff and the other Aggrieved Employees were not provided with accurate wage
10 statements as mandated by law pursuant to Labor Code § 226. Specifically, Defendants failed to issue
11 wage statements as "a detachable part of the check, draft, or voucher paying the employee's wages,
12 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
13 Additionally, the wage statements issued to Plaintiff and the other Aggrieved Employees were not
14 recorded in "ink or other indelible form."

15 108. Defendants failed to comply with Labor Code § 226(a)(1) as "gross wages earned"
16 were not accurately reflected in that: all hours worked, including overtime, were not included.

17 109. Defendants failed to comply with Labor Code § 226(a)(2) as "total hours worked by
18 the employee" were not accurately reflected in that: all hours worked, including overtime, were not
19 included.

20 110. Defendants failed to comply with Labor Code § 226(a)(5) as "net wages earned" were
21 not accurately reflected in that: all hours worked, including overtime, were not included.

22 111. Defendants failed to comply with Labor Code § 226(a)(9) as "all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at each hourly
24 rate by the employee" were not accurately reflected in that: all hours worked, including overtime,
25 were not included.

26 112. In failing to pay Plaintiff and Aggrieved Employees wages, overtime, premium pay,
27 etc., and failing to provide them with checks and wage statements, Defendants failed to timely pay
28 Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants

1 failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved
2 Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor
3 Code § 1174 and the applicable IWC wage orders.

4 113. During the applicable limitations period, Defendants have violated Labor Code
5 §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and
6 2802.

7 114. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of herself
8 and other current and former employees, to bring a representative civil action to recover civil penalties
9 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
10 maintained as a class action pursuant to Code of Civil Procedure § 382.

11 115. Plaintiff, a former employee against whom Defendants committed one or more of the
12 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
13 within the meaning of Labor Code § 2699©.

14 116. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
15 2699.3.

16 117. Plaintiff has exhausted her administrative remedy by uploading a certified letter to the
17 LWDA and Defendants postmarked on October 26, 2023. The LWDA has not provided notice of its
18 intent to investigate the alleged violations within 65 calendar days of the upload and the postmark
19 date of the letter.

20 118. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff seeks the following civil penalties
21 for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174,
22 1194, 1194.2, 1197, 1197.1, 1198, 2802:

23 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1174, 1194,
24 1198, and 2802 one hundred dollars (\$100) for each employee per pay period
25 for each initial violation and two hundred dollars (\$200) for each employee per
26 pay period for each subsequent violation (penalties set by Labor Code §
27 2699(f)(2));

28 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty

(30) days' pay as waiting time (penalties set by Labor Code § 256);

iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 210);

iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all other aggrieved employees, the State of California, and the general public, prays for relief and judgment against Defendants as follows:

- (1) Pre-judgment interest;
- (2) Civil penalties;
- (3) Costs of suit;
- (4) Reasonable attorneys' fees; and
- (5) Such other relief as the Court deems just and proper.

Dated: January 4, 2024

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff JAMES D. GREENE