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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Makeda Joyeux, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BRIANNE AGUILAR, as an
aggrieved employee pursuant to the
Private Attorneys General Act
("PAGA"), on behalf of the State of
California and other non-party
Aggrieved Employees,

Plaintiff,

vs.

J & J SNACK FOODS CORP. OF
CALIFORNIA, a California
corporation; J & J SNACK FOODS
SALES CORP., a New Jersey
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Brianne Aguilar, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on October 19, 2023, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Brianne Aguilar is a resident of Colton, in San Bernardino County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
12 approximately August 2022 to June 2023. Plaintiff worked for Defendants as a General
13 Laborer/Relief-Floater at their California Churro location in Colton, California. Plaintiff
14 typically worked seven (7) hours or more per day, and five (5) days per week. At the time
15 Plaintiff’s employment with Defendants ended, she was compensated approximately \$19.15
16 per hour. Plaintiff’s job duties included, without limitation, preparing and packaging churros,
17 transporting ingredients to the production line, and providing shift relief for other employees.

18 7. On information and belief, Defendants required some employees, including
19 Plaintiff, to execute arbitration agreements at the time of their hire or during their
20 employment. On further information and belief, Defendants’ arbitration agreements were and
21 are both procedurally and substantively unconscionable. Specifically, Defendants presented
22 employees with a “Voluntary Agreement to Arbitrate” (“Arbitration Agreement”) which had
23 to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was
24 among several documents presented to employees for signature during the orientation process,
25 including Employee Handbook Acknowledgment and Understanding Receipt,
26 Acknowledgement of At-Will Employment Status, Non-Discrimination and Anti-Harassment
27 Policy Employee Acknowledgement, Safety Policy, and Electronic Media Systems and Services
28 Policy. Also, employees did not have a meaningful opportunity to negotiate the terms of the

1 Arbitration Agreement. Rather, they were provided to Defendants' employees for them to
2 sign on a take-it or leave-it basis, along with other onboarding documents. Further,
3 Defendants did not set forth in the agreements or otherwise provide employees with the rules
4 which will govern the arbitration, instead forcing employees to seek this information out on
5 their own.

6 8. J & J SNACK FOODS CORP. OF CALIFORNIA was and is, upon information
7 and belief, a California corporation, and at all times hereinafter mentioned, an employer
8 whose employees are engaged throughout this county and the State of California.

9 9. J & J SNACK FOODS SALES CORP. was and is, upon information and belief,
10 a New Jersey corporation, and at all times hereinafter mentioned, an employer whose
11 employees are engaged throughout this county and the State of California.

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

16 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of J & J SNACK FOODS CORP. OF
18 CALIFORNIA and J & J SNACK FOODS SALES CORP. at all relevant times.

19 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, J & J SNACK
21 FOODS CORP. OF CALIFORNIA; J & J SNACK FOODS SALES CORP; and/or DOES 1
22 through 10 (collectively, "Defendants" or "J & J"), each acting as the agent, employee, alter
23 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
24 was acting within the course and scope of such agency, employment, joint venture, or
25 concerted activity with legal authority to act on the others' behalf. The acts of any and all
26 Defendants were in accordance with, and represent, the official policy of Defendants.

27 13. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

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

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

17 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
18 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
19 non-party Aggrieved Employees because Defendants have:

- 20 (a) jointly exercised meaningful control over the work performed by
21 Plaintiff and other non-party Aggrieved Employees;
- 22 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
23 Aggrieved Employees’ wages, hours, and working conditions, including
24 the quantity, quality standards, speed, scheduling, and operative details
25 of the tasks performed by Plaintiff and other non-party Aggrieved
26 Employees;
- 27 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
28 perform work which is an integral part of Defendants’ businesses; and

1 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
2 Employees as a matter of economic reality in that Plaintiff and other
3 non-party Aggrieved Employees were dependent on Defendants, who
4 shared the power to set the wages of Plaintiff and other non-party
5 Aggrieved Employees and determined their working conditions, and
6 who jointly reaped the benefits from the underpayment of their wages
7 and noncompliance with other statutory provisions governing their
8 employment.

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

12 18. J & J SNACK FOODS CORP. OF CALIFORNIA; J & J SNACK FOODS
13 SALES CORP.; and/or DOES 1 through 10 are therefore alter egos of each other.

14 19. Adherence to the fiction of the separate existence of Defendants would permit
15 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
16 from liability for the wrongful acts committed by them under the name J & J.

17 20. Plaintiff further alleges, upon information and belief, that the Defendants J & J
18 SNACK FOODS CORP. OF CALIFORNIA and J & J SNACK FOODS SALES CORP. are
19 alter egos of each other for the following reasons:

20 (a) On the California Secretary of State's website
21 (<https://bizfileonline.sos.ca.gov/>), J & J SNACK FOODS CORP. OF
22 CALIFORNIA and J & J SNACK FOODS SALES CORP. share the
23 same agent for service of process, "CORPORATION SERVICE
24 COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS
25 CSC – LAWYERS INCORPORATING SERVICE";

26 (b) According to their most recent "Statement of Information" forms filed
27 with the California Secretary of State, J & J SNACK FOODS CORP.
28 OF CALIFORNIA and J & J SNACK FOODS SALES CORP. share the

1 same California Office of Corporation address, “5353 DOWNEY
2 ROAD VERNON, CA 90058”; and

3 (c) On information and belief, J & J SNACK FOODS CORP. OF
4 CALIFORNIA and J & J SNACK FOODS SALES CORP. utilize the
5 same standardized employment forms and issue the same employment
6 policies.

7 **PAGA REPRESENTATIVE ALLEGATIONS**

8 21. Defendants manufacture snack foods and distribute frozen beverages, which
9 they market nationally to the food service and retail supermarkets industries. Upon
10 information and belief, Defendants maintain a single, centralized Human Resources (HR)
11 department at their corporate headquarters in Pennsauken, New Jersey, or Vernon, California,
12 for all non-exempt, hourly paid employees working for Defendants in California, which is
13 responsible for the recruiting and hiring of new employees, and communicating and
14 implementing Defendants’ company-wide policies, including timekeeping policies and meal
15 and rest period policies, to employees throughout California.

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

23 23. Upon information and belief, Defendants maintain a centralized Payroll
24 department at their corporate headquarters in Pennsauken, New Jersey, or Vernon, California,
25 which processes payroll for all non-exempt, hourly paid employees working for Defendants at
26 their various locations in California, including Plaintiff and other non-party Aggrieved
27 Employees. Based upon information and belief, Defendants issue the same formatted wage
28 statements to all non-exempt, hourly paid employees in California, irrespective of their work

1 locations. Upon information and belief, Defendants process payroll for departing employees
2 in the same manner throughout the State of California, regardless of the manner in which each
3 employee's employment ends.

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

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

10 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
11 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
12 were not recorded.

13 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive certain wages for overtime compensation and that they were not receiving certain
16 wages for overtime compensation.

17 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that other non-party Aggrieved Employees were entitled to be paid at a
19 regular rate of pay, and corresponding rates of pay, for overtime wages and/or meal and rest
20 period premiums, that included as eligible income all remuneration required by law, including
21 but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or
22 other forms of compensation, but failed to include all forms of remuneration in calculating the
23 regular rate of pay for other non-party Aggrieved Employees.

24 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive at least minimum wages for compensation and that they were not receiving at least
27 minimum wages for work that was required to be done off-the-clock. In violation of the
28 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at

1 least minimum wages for work done off-the-clock.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
5 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
6 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
7 other non-party Aggrieved Employees were not provided with all meal periods or payment of
8 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
9 uninterrupted, thirty (30) minute meal period.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
13 payment of one (1) additional hour of pay at their regular rates of pay when they were not
14 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
15 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
16 provided with payment of one (1) additional hour of pay at their regular rates of pay when
17 they were not authorized and permitted to take a compliant rest period.

18 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive complete and accurate wage statements in accordance with California law. In
21 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
22 were not provided complete and accurate wage statements.

23 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that they had a duty to maintain accurate and complete payroll records in
25 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
26 and intentionally failed to do so.

27 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 timely payment of wages during their employment. In violation of the California Labor Code,
2 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
3 including, but not limited to, overtime wages, minimum wages, meal and rest period
4 premiums, sick leave pay, and/or reporting time pay, within permissible time periods.

5 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 timely payment of all wages earned upon termination of employment. In violation of the
8 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
9 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
10 meal and rest period premiums, sick leave pay, and/or reporting time pay, within permissible
11 time periods.

12 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that other non-party Aggrieved Employees were entitled to receive sick
14 leave benefits to be paid at a regular rate of pay, that included, as eligible income, all income
15 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
16 violation of the California Labor Code, Defendants failed to include all forms of remuneration
17 in calculating the regular rate of pay for sick leave pay.

18 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 be paid reporting time pay when they reported to work for their usual or scheduled shift but
21 were put to work for less than half of the usual or scheduled shift. In violation of the
22 California Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved
23 Employees reporting time pay due.

24 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that they had a duty to maintain, for Plaintiff and other non-party
26 Aggrieved Employees, a temperature in work areas that provided reasonable comfort
27 consistent with industry-wide standards for the nature of the process and the work performed,
28 and to take all feasible means to reduce excessive heat or humidity to a degree providing

1 reasonable comfort, but failed to do so.

2 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
3 mentioned, Defendants knew or should have known that they had a duty to compensate
4 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
5 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
6 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
7 that they were properly denied wages, all in order to increase Defendants' profits.

8 40. At all times herein set forth, PAGA provides that any provision of law under
9 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
10 assessed and collected by the LWDA for violations of the California Labor Code and
11 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
12 civil action brought on behalf of themselves and other current or former employees pursuant
13 to procedures outlined in California Labor Code section 2699.3.

14 41. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
15 person who was employed by the alleged violator and against whom one or more of the
16 alleged violations was committed."

17 42. Plaintiff and other current and former employees of Defendants are "aggrieved
18 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
19 or former employees and one or more of the alleged violations were committed against them.

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

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

28 (b) An aggrieved employee's notice filed with the LWDA pursuant to

2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

- (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

- (a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil

1 action pursuant to Section 2699 may commence. If the alleged violation
2 is not cured within the 33-day period, the employee may commence a
3 civil action pursuant to Section 2699.

4 45. On October 19, 2023, Plaintiff provided written notice by online filing to the
5 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
6 Code alleged to have been violated, including facts and theories to support the alleged
7 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
8 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
9 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
10 Plaintiff PAGA Case Number LWDA-CM-988821-23. A true and correct copy of Plaintiff's
11 written notice to the LWDA and Defendants dated October 19, 2023, is attached hereto as
12 "Exhibit 1."

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

16 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
17 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
18 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510,
19 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198.

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

1 as a private attorney general, seeks assessment and collection of civil penalties under Labor
2 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
3 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
4 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
5 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
6 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
7 applicable IWC Wage Order.

8 49. Defendants, at all times relevant to this complaint, were employers or persons
9 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
10 Employees' rights by violating various sections of the California Labor Code as set forth
11 above.

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

15 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
16 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
17 private attorney general, seeks assessment and collection of civil penalties for herself, all other
18 non-party Aggrieved Employees, and the State of California against Defendants for violations
19 of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,
20 1174(d), 1182.12, 1194, 1197, and 1198.

21 **FIRST CAUSE OF ACTION**

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

23 **(Against all Defendants)**

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

26 53. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
27 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
28 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,

1 510, 512(a), 1174(d), 1194, 1197, and 1198. Labor Code section 2699.3(c) permits aggrieved
2 employees, including Plaintiff, to recover civil penalties for violations of those Labor Code
3 sections not found in section 2699.5, including sections 246, 248.6, 516, and 1182.12.

4 54. Defendants' conduct, as alleged herein, violates numerous sections of the
5 California Labor Code, including, but not limited to, the following:

- 6 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
7 Wage Order for Defendants' failure to compensate Plaintiff and other
8 non-party Aggrieved Employees with all required overtime pay, as set
9 forth below;
- 10 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
11 applicable IWC Wage Order for Defendants' failure to include all forms
12 of remuneration in the regular rate of pay as required by law for
13 purposes of paying overtime wages and/or meal and rest period
14 premiums to other non-party Aggrieved Employees, as set forth below;
- 15 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
16 the applicable IWC Wage Order for Defendants' failure to compensate
17 Plaintiff and other non-party Aggrieved Employees with at least
18 minimum wages for all hours worked, as set forth below;
- 19 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
20 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
21 and other non-party Aggrieved Employees with meal periods, as set
22 forth below;
- 23 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
24 applicable IWC Wage Order for Defendants' failure to authorize and
25 permit Plaintiff and other non-party Aggrieved Employees to take rest
26 periods, as set forth below;
- 27 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
28 IWC Wage Order for failure to provide accurate and complete wage

statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave paid to other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when Plaintiff and other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below; and
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee

1 . . . under conditions of labor prohibited by the order is unlawful.”

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

6 57. Specifically, the applicable IWC Wage Order provides that Defendants are and
7 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
8 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
9 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
10 (40) hours in a workweek.

11 58. The applicable IWC Wage Order further provides that Defendants are and were
12 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
13 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
14 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
15 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

16 59. California Labor Code section 510 codifies the right to overtime compensation
17 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
18 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
19 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
20 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
21 in a day on the seventh (7th) day of work.

22 60. During the relevant time period, Defendants willfully failed to pay all overtime
23 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
24 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
25 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
26 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
27 not recorded.

28 61. First, during the relevant time period, Defendants had, and continue to have, a

1 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
2 party Aggrieved Employees from recording hours worked that were outside of their scheduled
3 shifts in order to limit the amount of overtime employees could accrue. This policy of
4 limiting overtime, coupled with Defendants' understaffing and assignment of heavy
5 workloads (*see infra*), led Plaintiff and other non-party Aggrieved Employees to work off-the-
6 clock before and after their scheduled shift times in order to complete their assigned tasks.
7 For example, Plaintiff and other non-party Aggrieved Employees were required to change into
8 their uniforms and/or don personal protective equipment ("PPE"), such as coats, aprons, hair
9 nets, and glasses. However, Defendants did not always compensate Plaintiff and other non-
10 party Aggrieved Employees for this time spent donning their uniforms and/or PPE at the
11 beginning of their shifts or during their meal periods despite being on work premises and
12 under Defendants' control. In addition, three (3) times per week, after Plaintiff clocked out
13 from her shifts, she was required to return to the production line and complete work tasks,
14 which could take an additional 30 minutes off-the-clock. Thus, Defendants failed to track this
15 time spent working before or after scheduled shifts, and Plaintiff and other non-party
16 Aggrieved Employees received no compensation for this time.

17 62. Second, during the relevant time period, Defendants failed to provide Plaintiff
18 and other non-party Aggrieved Employees with a sufficient number of timeclock machines to
19 use, thus forcing Plaintiff and other non-party Aggrieved Employees to wait in line off-the-
20 clock and under Defendants' control, time for which they were not paid. For example,
21 Plaintiff would report to work at the start of her scheduled shift, but would be required to wait
22 up to 10 minutes in a long line of employees to clock in.

23 63. Third, as stated, Defendants had, and continues to have, company-wide policies
24 and/or practices of understaffing their locations while assigning heavy workloads and
25 productivity expectations, which resulted in a failure to provide Plaintiff and other non-party
26 Aggrieved Employees with adequate meal period coverage to permit them to take compliant
27 meal periods. Defendants also failed to schedule meal periods, which further caused Plaintiff
28 and other non-party Aggrieved Employees to not be relieved of their duties for compliant

1 meal periods. For example, Plaintiff had her meal periods interrupted to provide employee
2 coverage on the production line and continue to prepare and package batches of churros. As a
3 result, Plaintiff and other non-party Aggrieved Employees worked through meal periods
4 and/or had meal periods cut short or interrupted in order to handle their workloads.

5 64. Furthermore, on information and belief, because Defendants frowned upon
6 employees accruing meal period penalties, Defendants' management adjusted Plaintiff's and
7 other non-party Aggrieved Employees' time records to reflect compliant meal periods,
8 regardless of whether they had received a compliant meal period or not, in order to strictly
9 limit meal penalties that Defendants would otherwise owe. Thus, Defendants did not record
10 all hours worked during meal periods and Plaintiff and other non-party Aggrieved Employees
11 performed work during meal periods for which they were not paid.

12 65. Defendants knew or should have known that, as a result of these company-wide
13 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
14 their assigned duties off-the-clock before and after their shifts and during meal periods, and
15 were suffered or permitted to perform work for which they were not paid. Because Plaintiff and
16 other non-party Aggrieved Employees worked shifts of eight (8) hours or more a day or forty
17 (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.
18 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
19 for all of the overtime hours they actually worked.

20 66. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
21 correct overtime rate for the recorded overtime hours that they generated. In addition to an
22 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
23 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
24 California Labor Code, on information and belief, Defendants failed to incorporate all
25 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
26 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
27 overtime wage rates. Therefore, during times when other non-party Aggrieved Employees
28 worked overtime and received these other forms of pay, Defendants failed to pay all overtime

1 wages by paying a lower overtime rate than required.

2 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
3 the balance of overtime compensation as required by California law, violates the provisions of
4 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
5 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
6 558 and/or 2699(a), (f), and (g).

7 **FAILURE TO PAY MINIMUM WAGES**

8 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

9 68. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
10 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
11 to be paid to employees, and the payment of a wage less than the minimum so fixed is
12 unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time
13 during which an employee is subject to the control of an employer, and includes all the time
14 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code
15 Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

16 69. As stated above, due to Defendants' restrictions on overtime accrual,
17 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
18 for actual hours worked before and after scheduled shifts, because these hours were not
19 appropriately recorded. As a result, Plaintiff and other non-party Aggrieved Employees were
20 required to complete various tasks off-the-clock before and after their scheduled shifts, such
21 as donning their uniforms and/or PPE, returning to the production line to complete tasks, and
22 waiting in line to clock-in at an inadequate number of timekeeping machines.

23 70. Furthermore, as stated, due to Defendants' uniform practices of understaffing,
24 assigning heavy workloads and productivity requirements, failing to schedule meal periods,
25 and the resulting lack of coverage, Plaintiff and other non-party Aggrieved Employees were
26 impeded from taking all uninterrupted meal periods to which they were entitled and were
27 required to work off-the-clock. Moreover, as stated, in order to prevent employees from
28 accruing meal period penalties, upon information and belief, Defendants' management

1 adjusted employee time records to reflect compliant meal periods, but required them to
2 continue working, time for which they were not paid. Thus, Defendants systematically failed
3 to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during
4 unpaid meal periods because these hours were not always correctly recorded.

5 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
6 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
7 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
8 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
9 1194, 1197, and 1198.

10 72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
11 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
12 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
13 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
15 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

16 73. At all relevant times herein set forth, the applicable IWC Wage Order and
17 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
18 non-party Aggrieved Employees' employment by Defendants.

19 74. At all relevant times herein set forth, California Labor Code section 512(a)
20 provides that an employer may not require, cause, or permit an employee to work for a period
21 of more than five (5) hours per day without providing the employee with a meal period of not
22 less than thirty (30) minutes, except that if the total work period per day of the employee is
23 not more than six (6) hours, the meal period may be waived by mutual consent of both the
24 employer and the employee. Under California law, first meal periods must start after no more
25 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

26 75. At all relevant times herein set forth, California Labor Code sections 226.7,
27 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
28 meal period mandated by an applicable order of the IWC.

1 76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
2 and the applicable IWC Wage Order also require employers to provide a second meal period
3 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
4 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
5 total hours worked is no more than twelve (12) hours, the second meal period may be waived
6 by mutual consent of the employer and the employee only if the first meal period was not
7 waived.

8 77. During the relevant time period, as stated, Defendants had, and continues to
9 have, company-wide policies and/or practices of understaffing their locations, assigning heavy
10 workloads and productivity requirements, and failing to schedule meal periods, which resulted
11 in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved
12 Employees from taking all timely, uninterrupted meal periods to which they were entitled. As
13 a result, Plaintiff and other non-party Aggrieved Employees had to work through all or part of
14 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
15 time before taking meal periods. For example, Plaintiff often had her meal periods interrupted
16 and/or cut short in order to don her uniform and/or PPE before clocking back in for her shift
17 and assist with production. As a further example, in order to meet Defendants' productivity
18 goal of producing 160 batches of churros per shift, Plaintiff and other non-party Aggrieved
19 Employees took late meal periods which were well after five (5) hours into their shifts.

20 78. Furthermore, as stated, on information and belief, because Defendants frowned
21 upon employees accruing meal period penalties, Defendants' management adjusted employee
22 time records, regardless of whether they had received a compliant meal period or not, in order
23 to strictly limit meal penalties that would need to be paid by Defendants. For example,
24 Defendants' management changed Plaintiff's time sheets to record that she had received
25 compliant meal periods on shifts when she had not, in fact, received these timely meal
26 periods.

27 79. Defendants also did not provide other non-party Aggrieved Employees with
28 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.

1 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
2 days that they were entitled to meal periods and were not relieved of all duties.

3 80. At all times herein mentioned, Defendants knew or should have known that, as
4 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
5 from being relieved of all duties and required to perform some of their assigned duties during
6 meal periods. Defendants further knew or should have known that Defendants did not pay
7 Plaintiff and other non-party Aggrieved Employees meal period premiums when meal periods
8 were late, interrupted, shortened, or missed.

9 81. Moreover, Defendants engaged in a company-wide practice and/or policy of
10 not paying meal period premiums owed when compliant meal periods are not provided.
11 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
12 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
13 to the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
14 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
15 Employees the correct rate of pay for premiums because Defendant systematically failed to
16 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
17 other forms of remuneration, in the regular rate of pay. Therefore, during times when other
18 non-party Aggrieved Employees received meal period premiums and these other forms of pay,
19 Defendants failed to pay full meal period premiums by paying a lower rate than required.

20 82. Defendants' conduct violates the applicable IWC Wage Order, and California
21 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

25 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

26 83. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
28 non-party Aggrieved Employees' employment by Defendants.

1 84. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

7 85. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 273 (2016).

15 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
17 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
18 required rest period was not authorized and permitted.

19 87. During the relevant time period, Defendants regularly failed to authorize and
20 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
21 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
22 Defendants’ company-wide practices and/or policies, including understaffing and assigning
23 heavy workloads and productivity requirements, prevented Plaintiff and other non-party
24 Aggrieved Employees from being relieved of all duty to take rest periods. Additionally,
25 Defendants failed to schedule rest periods, which, coupled with Defendants’ failure to provide
26 adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved
27 Employees not being authorized and permitted to take rest periods.

28 88. Furthermore, upon information and belief, Defendants maintained and

1 implemented a company-wide on-premises rest period policy, which effectively required that
2 Plaintiff and other non-party Aggrieved Employees remain on the premises during their rest
3 periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from
4 leaving Defendants' premises during rest periods, they were denied the ability to use their rest
5 periods freely for their own purposes, such as running personal errands. Thus, Defendants
6 effectively maintained control over Plaintiff and other non-party Aggrieved Employees during
7 rest periods.

8 89. As a result of Defendants' practices and policies, Plaintiff and other non-party
9 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
10 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
11 were entitled. For example, Plaintiff had her rest periods shortened in order to don her
12 uniform and/or PPE when returning to her shift. Also, because of the lack of rest period
13 coverage, Plaintiff's rest periods were interrupted to assist with various areas of production
14 such as, frying, filling, and packaging churros.

15 90. Defendants have also engaged in a company-wide practice and/or policy of not
16 paying rest period premiums owed when rest periods are not authorized and permitted.
17 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
18 have not received premium pay for all missed rest periods. Alternatively, to the extent that
19 Defendants did pay other non-party Aggrieved Employees one (1) additional hour of premium
20 pay for missed rest periods, Defendants did not pay other non-party Aggrieved Employees at
21 the correct rate of pay for premiums because Defendants failed to include all forms of
22 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
23 remuneration, in the regular rate of pay. Accordingly, Defendants failed to authorize and
24 permit all compliant rest periods and failed to pay the full rest period premiums due.

25 91. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (g).

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

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

93. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

95. Additionally, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross

1 wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in
2 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates
3 in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest
4 period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

13 97. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the hours
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments” Labor Code section 1174.5 provides that employers are subject to a
20 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
21 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants
22 willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved
23 Employees showing the daily hours they worked and the wages paid thereto as a result of failing
24 to record the off-the-clock hours that they worked.

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

1 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
2 Wage Order, employers are required to keep accurate time records showing when the
3 employee begins and ends each work period and meal period. During the relevant time
4 period, Defendants engaged in company-wide practices and/or policies of failing to record
5 actual hours worked (including falsifying time records by recording that compliant meal
6 periods were taken regardless of if or when meal periods were actually taken), and thereby
7 failed, on a company-wide basis, to keep accurate records of work period and meal period
8 start and end times for Plaintiff and other non-party Aggrieved Employees, in violation of
9 section 1198. Furthermore, in light of Defendants’ failure to provide other non-party
10 Aggrieved Employees with second 30-minute meal periods to which they were entitled,
11 Defendants kept no records of meal start and end times for second meal periods.

12 99. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
13 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
14 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

15 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
16 **VIOLATION OF LABOR CODE SECTION 204**

17 100. At all relevant times herein set forth, California Labor Code section 204
18 requires that all wages earned by any person in any employment between the 1st and the 15th
19 days, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the 16th and the 26th day of the month during which
21 the labor was performed. Labor Code section 204 further provides that all wages earned by
22 any person in any employment between the 16th and the last day, inclusive, of any calendar
23 month, other than those wages due upon termination of an employee, are due and payable
24 between the 1st and the 10th day of the following month.

25 101. At all relevant times herein, California Labor Code section 204 also requires
26 that all wages earned for labor in excess of the normal work period shall be paid no later than
27 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
28 Labor Code section 204 provides that the requirements of this section are deemed satisfied by

1 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
2 more than seven (7) calendar days following the close of the payroll period.

3 102. During the relevant time period, Defendants willfully failed to pay Plaintiff and
4 other non-party Aggrieved Employees all wages due to them within any time period specified
5 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
6 wages, meal and rest period premiums, sick leave pay, and/or reporting time pay.

7 103. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES UPON TERMINATION**

10 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

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

18 105. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
19 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
20 above, including but not limited to, overtime wages, minimum wages, meal and rest period
21 premiums, sick leave pay, and/or reporting time pay, either at the time of discharge, or within
22 seventy-two (72) hours of their leaving Defendants' employ.

23 106. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
24 who are no longer employed by Defendants their wages earned and unpaid at the time of
25 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
26 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
27 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
28 2699(a), (f), and (g).

1 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**

2 **VIOLATION OF LABOR CODE SECTION 246 AND 248.6**

3 107. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
4 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
5 days from the commencement of employment with paid sick days, to be accrued at least one
6 hour for every 30 hours worked. Pursuant to Labor Code section 246(b)(4), employers must
7 provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or
8 paid time off) in each year of the employee's employment. Further, Labor Code section 246(l)
9 provides that an employer shall calculate paid sick leave by using one of two calculations: 1)
10 "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular
11 rate of pay for the workweek in which the employee uses paid sick time, whether or not the
12 employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
13 employees shall be calculated by dividing the employee's total wages, not including overtime
14 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
15 of employment."

16 108. At all relevant times herein, California Labor Code section 248.6 provides
17 covered employees with COVID-19 supplemental paid sick leave. Labor Code section
18 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be
19 compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular
20 rate of pay for the workweek in which the employee uses paid sick time, whether or not the
21 employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the
22 employee's total wages, not including overtime premium pay, by the employee's total
23 nonovertime hours worked in the full pay periods occurring within the prior 90 days of
24 employment; provided that, for nonexempt employees paid by piece rate, commission or other
25 method that uses all hours to determine the regular rate of pay, total wages, not including
26 overtime premium pay, shall be divided by all hours, to determine the correct amount of
27 COVID-19 supplemental paid sick leave under this subdivision."

28 109. During the relevant time period, Defendants did not pay other non-party

1 Aggrieved Employees the correct sick leave rates of pay. As stated, in addition to an hourly
2 wage, Defendants paid other non-party Aggrieved Employees incentive pay, nondiscretionary
3 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
4 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or
5 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
6 calculating the sick leave rate. Therefore, during times when other non-party Aggrieved
7 Employees took sick leave and received these other forms of pay, Defendants failed to pay all
8 sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants
9 paid other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead
10 of their regular rate of pay.

11 110. Defendants' failure to properly calculate the sick leave rates of pay based on all
12 remuneration paid has resulted in an underpayment of sick leave benefits to other non-party
13 Aggrieved Employees on a company-wide basis in violation of California Labor Code sections
14 246(l) and 248.6(b)(3)(A).

15 111. Other non-party Aggrieved Employees are therefore entitled to recover civil
16 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

17 **FAILURE TO PAY REPORTING TIME PAY**

18 **VIOLATION OF LABOR CODE SECTION 1198**

19 112. California Labor Code section 1198 makes it illegal to employ an employee
20 under conditions of labor that are prohibited by the applicable IWC Wage Order. California
21 Labor Code section 1198 requires that "... the standard conditions of labor fixed by the
22 commission shall be the ... standard conditions of labor for employees. The employment of
23 any employee ... under conditions of labor prohibited by the order is unlawful."

24 113. California Code of Regulations, Title 8, section 11010(5)(A) provides that
25 "[e]ach workday an employee is required to report for work and does report, but is not put to
26 work or is furnished less than half said employee's usual or scheduled day's work, the employee
27 shall be paid for half the usual or scheduled day's work, but in no event for less than two (2)
28 hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less

1 than the minimum wage.” The “primary purpose of the reporting time regulation” is “to
2 guarantee at least partial compensation for employees who report to work expecting to work a
3 specified number of hours, and who are deprived of that amount because of inadequate
4 scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal.
5 App. 4th 556 (2012).

6 114. On information and belief, Defendants violated California Labor Code section
7 1198 and California Code of Regulations, Title 8, section 11010(5)(A), because Defendants
8 failed to pay Plaintiff and other non-party Aggrieved Employees reporting time pay when they
9 reported to work for their usual or scheduled shifts, but were put to work for less than half of the
10 usual or scheduled shift. For example, approximately five (5) times per month, Defendants’
11 managers sent Plaintiff home before she had an opportunity to work at least half of her
12 scheduled eight (8) hour shift, but on information and belief, Plaintiff was only paid for the time
13 she had worked. Although Plaintiff and other non-party Aggrieved Employees reported to work
14 based on the schedule that Defendants provided to them, Defendants would send them home
15 before they had worked at least half of their scheduled shifts without giving them reporting time
16 pay.

17 115. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
18 properly compensated with reporting time pay in violation of California Labor Code section
19 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Plaintiff and other non-
20 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
21 Code sections 2699(a), (f), and (g).

22 **FAILURE TO MAINTAIN WORK TEMPERATURE PROVIDING REASONABLE**
23 **COMFORT**

24 **VIOLATION OF LABOR CODE SECTION 1198**

25 116. At all relevant times, California Labor Code section 1198 dictates that no
26 employer may employ an employee under conditions of labor that are prohibited by the
27 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the
28 standard conditions of labor fixed by the commission shall be the . . . standard conditions of

1 labor for employees. The employment of any employee . . . under conditions of labor prohibited
2 by the order is unlawful.”

3 117. California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide
4 that “[t]he temperature maintained in each work area shall provide reasonable comfort
5 consistent with industrywide standards for the nature of the process and the work
6 performed If excessive heat or humidity is created by the work process, the employer shall
7 take all feasible means to reduce such excessive heat or humidity to a degree providing
8 reasonable comfort.” California law requires an employer to endeavor to provide a safe and
9 healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section
10 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose
11 an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019,
12 applies its proposed regulations to “all indoor work areas where the temperature equals or
13 exceeds 82 degrees Fahrenheit when employees are present.”

14 118. Upon information and belief, Defendants violated California Labor Code section
15 1198 and California Code of Regulations, Title 8, section 11010(15), because Defendants failed
16 to maintain a temperature in work areas that provided reasonable comfort consistent with
17 industry-wide standards for the nature of the process and the work performed and failed to take
18 all feasible means to reduce excessive heat or humidity to a degree providing reasonable
19 comfort.

20 119. During the relevant time period, Plaintiff and other non-party Aggrieved
21 Employees were subjected to excessive heat and/or humidity resulting in temperatures equaling
22 or exceeding 82 degrees Fahrenheit. Defendants failed to provide Plaintiff and other non-party
23 Aggrieved Employees with reasonable comfort by maintaining the indoor temperature within
24 the range of industry standards by providing adequate air conditioning, in violation of California
25 Labor Code section 1198 and IWC Wage Order No. 1-2001, Section 15. For example, Plaintiff
26 and other non-party Aggrieved Employees who were present in Defendants’ facilities were not
27 provided air conditioning or fans, and would be required to work indoors at 98 degrees
28 Fahrenheit or more.

120. Accordingly, Defendants failed to maintain, in their work areas, a temperature providing reasonable comfort for their employees, including Plaintiff and other non-party Aggrieved Employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15). Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 246 and 248.6 (by failing to properly calculate sick leave pay); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); and 1198 and the applicable IWC Wage Order (by failing to maintain reasonable work temperature);

1 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
2 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
3 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and
4 1198;

5 4. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d),
8 1182.12, 1194, 1197, and 1198;

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

10 6. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 Dated: December 26, 2023

Respectfully submitted,

Capstone Law APC

14
15 By: Roxanna Tabatabaeeepour
16 Roxanna Tabatabaeeepour
17 Ryan Tish
18 Alexander Wallin

19 Attorneys for Plaintiff Brianne Aguilar
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Exhibit 1

JEZZETTE RON
310.712.8142 Direct
Jezzette.Ron@capstonelawyers.com

October 19, 2023

VIA ONLINE SUBMISSION

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

Subject: *Brianne Aguilar v. J & J Snack Foods Corp. of California, et al.*

Dear PAGA Administrator:

This office represents Brianne Aguilar in connection with her claims under the California Labor Code. Ms. Aguilar was an employee of J & J SNACK FOODS CORP. OF CALIFORNIA and/or J & J SNACK FOODS SALES CORP. For the purposes of this letter, Ms. Aguilar collectively refers to these entities as (“J & J”).

The employers may be contacted directly at the addresses below:

J & J SNACK FOODS CORP. OF
CALIFORNIA
5353 DOWNEY ROAD
VERNON, CA 90058

J & J SNACK FOODS SALES CORP.
6000 CENTRAL HIGHWAY
PENNSAUKEN, NJ 08109

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

J & J employed Ms. Aguilar as an hourly paid, non-exempt employee from approximately August 2022 to June 2023. Ms. Aguilar worked for J & J as a General Laborer/Relief-Footer at its California Churro location in Colton, California. During her employment, Ms. Aguilar typically worked seven (7) or more hours per day and five (5) or more days per week. Ms. Aguilar was compensated approximately \$19.15 per hour at the time her employment ended with J & J. Her job duties included, without limitation, preparing and packaging churros, transporting ingredients to the production line, and providing shift relief for other employees.

J & J committed one or more of the following Labor Code violations against Ms. Aguilar the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

J & J’s Company-Wide and Uniform Payroll and HR Practices

J & J SNACK FOODS CORP. OF CALIFORNIA is a California corporation and J & J SNACK FOODS SALES CORP. is a New Jersey corporation. Together they manufacture snack foods and distribute frozen beverages, which they market nationally to the food service and retail supermarket industries. Upon information and belief, J & J maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Pennsauken, New Jersey or Vernon, California, for all non-exempt, hourly paid employees working for J & J in California, including Ms. Aguilar and other aggrieved employees. At all relevant times, J & J issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Aguilar and other aggrieved employees, regardless of their location or position.

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

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

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

J & J willfully failed to pay all overtime wages owed to Ms. Aguilar and other aggrieved employees. During the relevant time period, Ms. Aguilar and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve

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

(12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, J & J had a company-wide policy and/or practice of discouraging and impeding Ms. Aguilar and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with J & J's understaffing and assignment of heavy workloads (*see infra*), led Ms. Aguilar and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Ms. Aguilar and other aggrieved employees were required to change into their uniforms and/or don personal protective equipment ("PPE"), such as coats, aprons, hair nets, and glasses. However, J & J did not always compensate Ms. Aguilar and other aggrieved employees for this time spent donning their uniforms and/or PPE at the beginning of their shifts or during their meal periods despite being on work premises and under J & J's control. In addition, three (3) times per week, after Ms. Aguilar clocked out from her shifts, she was required to return to the production line and complete work tasks, which could take an additional thirty (30) minutes off-the-clock. Thus, J & J failed to track this time spent working before or after scheduled shifts, and Ms. Aguilar and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, J & J failed to provide Ms. Aguilar and other aggrieved employees with a sufficient number of timeclock machines to use, thus forcing Ms. Aguilar and other aggrieved employees to wait in line off-the-clock and under J & J's control, time for which they were not paid. For example, Ms. Aguilar would report to work at the start of her scheduled shift, but would be required to wait up to ten (10) minutes in a long line of employees to clock in.

Third, as stated, J & J had, and continues to have, a company-wide policy and/or practice of understaffing its locations. J & J's continuous understaffing, combined with the assignment of heavy workloads and productivity expectations, resulted in a failure to provide Ms. Aguilar and other aggrieved employees with adequate meal period coverage to permit them to take compliant meal periods. J & J also failed to schedule meal periods, which further caused Ms. Aguilar and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Aguilar had her meal periods interrupted to provide employee coverage on the production line and meet the demands of her workload. As a result, Ms. Aguilar and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads.

Furthermore, on information and belief, because J & J frowned upon employees accruing meal period penalties, J & J's management adjusted Ms. Aguilar's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that J & J would otherwise owe. Thus, J & J did not record all hours worked during meal periods and Ms. Aguilar and other aggrieved employees performed work during meal periods for which they were not paid.

J & J knew or should have known that as a result of these company-wide practices and/or policies, Ms. Aguilar and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Aguilar and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work

qualified for overtime premium pay. Therefore, Ms. Aguilar and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, J & J did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, J & J paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, J & J failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, J & J failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As stated above, due to J & J's restrictions on overtime accrual, J & J systematically failed to pay Ms. Aguilar and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not appropriately recorded. As a result, Ms. Aguilar and other aggrieved employees were required to complete various tasks off-the-clock before and after their scheduled shifts, such as donning their uniforms and/or PPE, returning to the production line to complete tasks, and waiting in line to clock-in at an inadequate number of timekeeping machines.

Furthermore, as stated, due to J & J's uniform practices of understaffing, assigning heavy workloads and productivity requirements, failing to schedule meal periods, and the resulting lack of coverage, Ms. Aguilar and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, J & J's management adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Thus, J & J systematically failed to pay Ms. Aguilar and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

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

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

During the relevant time period, as stated, J & J had, and continues to have, company-wide policies and/or practices of understaffing its locations, assigning heavy workloads and productivity requirements, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Ms. Aguilar and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Aguilar and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, on several occasions, Ms. Aguilar took her meal periods late, approximately after five (5) hours into her shifts, and often had her meal periods interrupted and/or cut short in order to don her uniform and/or PPE before clocking back in for her shift and assist with production. As a further example, in order to meet J & J's productivity goal of producing 160 batches of churros per shift, Ms. Aguilar and other aggrieved employees took late meal periods which were well after five (5) hours into their shifts.

Furthermore, as stated, on information and belief, because J & J frowned upon employees accruing meal period penalties, J & J's management adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by J & J. For example, J & J's management changed Ms. Aguilar's time sheets to record that she had received compliant meal periods on shifts when she had not, in fact, received these timely meal periods.

Moreover, J & J did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Aguilar and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, J & J knew or should have known that as a result of its company-wide policies and/or practices, Ms. Aguilar and other aggrieved employees were prevented from being relieved of all duties and were required to perform some of their assigned duties during meal periods. J & J further knew or should have known that it did not pay Ms. Aguilar and other aggrieved employees all meal period premiums when meal periods were missed, late, interrupted, and/or shortened.

Furthermore, J & J engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. Aguilar and other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that J & J did pay other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, J & J did not pay other aggrieved employees at the correct rate of pay for premiums because J & J systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

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

During the relevant time period, J & J regularly failed to authorize and permit Ms. Aguilar and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, J & J's company-wide practices, including understaffing, and assigning heavy workloads and productivity requirements, prevented Ms. Aguilar and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. J & J also failed to schedule rest periods, which, coupled with J & J's failure to provide adequate rest period coverage, further led to Ms. Aguilar and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, J & J maintained a company-wide on-premises rest period policy, which effectively required that Ms. Aguilar and other aggrieved employees remain on J & J's premises during their rest periods. Because Ms. Aguilar and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, J & J effectively maintained control over Ms. Aguilar and other aggrieved employees during rest periods.

As a result of J & J's practices and policies, Ms. Aguilar and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Aguilar had her rest periods shortened in order don her uniforms and/or PPE when returning to her shift. Also, because of the lack of rest period coverage, Ms. Aguilar's rest periods were interrupted to assist with various areas of production such as, frying, filing, and packaging churros.

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

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

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

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

During the relevant time period, J & J has knowingly and intentionally provided Ms. Aguilar and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, J & J issued uniform wage statements to Ms. Aguilar and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period

premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, J & J violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), J & J willfully failed to maintain accurate payroll records for Ms. Aguilar and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, J & J engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to

keep accurate records of work period and meal period start and end times for Ms. Aguilar and other aggrieved employees in violation of section 1198. Furthermore, in light of J & J's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, J & J kept no records of meal start and end times for second meal periods.

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

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

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

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

During the relevant time period, J & J failed to pay Ms. Aguilar and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, reporting time pay, and/or sick leave pay, within any time period specified by California Labor Code section 204.

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

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

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

During the relevant time period, J & J willfully failed to pay Ms. Aguilar and other aggrieved employees who are no longer employed by J & J all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, reporting time pay, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving J & J's employ.

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

Violation of California Labor Code §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision."

During the relevant time period, J & J did not pay other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, J & J paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, J & J failed to incorporate all remunerations, including incentive pay, and nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, J & J failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, J & J paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

J & J's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide

basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11010(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, J & J violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A), because J & J failed to pay Ms. Aguilar and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day's work.

On information and belief, J & J had a company-wide practice of sending Ms. Aguilar and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Aguilar and other aggrieved employees for half of their usual or scheduled shift. For example, approximately five (5) times per month, J & J's managers sent Ms. Aguilar home before she had an opportunity to work at least half of her scheduled eight (8) hour shift, but on information and belief, Ms. Aguilar was only paid for the time she had worked. Although Ms. Aguilar and other aggrieved employees would report to work based on the schedule that J & J provided to them, J & J would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Aguilar and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5)(A).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 15 – Failure to Maintain Work Temperature Providing Reasonable Comfort

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

California Code of Regulations, Title 8, sections 11010(15)(A) and (B) provide that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.” California law requires an employer to endeavor to provide a safe and healthy workplace (Cal. Code Regs. tit. 8, § 3203). Moreover, California Labor Code section 6720 required the California Division of Occupational Safety and Health (“OSHA”) to propose an indoor heat illness standard by January 1, 2019; OSHA’s draft standard, as of April 22, 2019, applies its proposed regulations to “all indoor work areas where the temperature equals or exceeds 82 degrees Fahrenheit when employees are present.”

Upon information and belief, J & J violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15), because J & J failed to maintain a temperature in work areas that provided reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and failed to take all feasible means to reduce excessive heat or humidity to a degree providing reasonable comfort.

During the relevant time period, Ms. Aguilar and other aggrieved employees were subjected to excessive heat and/or humidity resulting in temperatures equaling or exceeding 82 degrees Fahrenheit. J & J failed to provide Ms. Aguilar and other aggrieved employees with reasonable comfort by maintaining the indoor temperature within the range of industry standards by providing adequate air conditioning, in violation of California Labor Code section 1198 and IWC Wage Order 1-2001, subdivision 15. For example, Ms. Aguilar and other aggrieved employees who were present in J & J’s facilities were not provided sufficient air conditioning or fans, and would be required to work indoors at 82 degrees Fahrenheit or more. Accordingly, J & J failed to maintain, in its work areas, a temperature providing reasonable comfort for its employees, Ms. Aguilar and other aggrieved employees, in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the

employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” J & J, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Aguilar’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Aguilar seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Aguilar, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against J & J for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

Pre-Litigation Demand

This notice shall further serve as Ms. Aguilar’s reasonable attempt to settle her dispute with J & J prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform J & J of Ms. Aguilar’s aforementioned grievances and the proposed remedies as detailed below, while affording J & J a reasonable opportunity to satisfy Ms. Aguilar’s demands.

Demand is hereby made that J & J shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. J & J shall pay Ms. Aguilar and all other aggrieved employees employed by J & J at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. J & J shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. J & J shall conduct a survey or interview all current and former aggrieved employees in California who worked for J & J in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided and the number of rest periods which were not authorized and permitted, with the investigation to be completed within 60 days.
4. J & J shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. J & J also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. J & J shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and/or 248.6(b)(3)(A).
6. J & J shall pay accrued legal interest to Ms. Aguilar and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. J & J shall provide Ms. Aguilar and all aggrieved employees employed by J & J at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. J & J shall pay waiting time penalties, equal to 30 days of pay, to Ms. Aguilar and each former aggrieved employee who was not paid all wages due as described herein.
9. J & J shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
10. J & J shall maintain a temperature in work areas that provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed and take all feasible means to reduce excessive heat to a degree providing reasonable comfort, as required by California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(15).
11. J & J shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 9-2001, section 20.

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

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

Best Regards,



Jezzette Ron

Copy: J & J SNACK FOODS CORP. OF CALIFORNIA (via U.S. Certified Mail); J & J SNACK FOODS SALES CORP. (via U.S. Certified Mail)

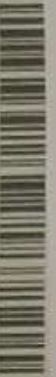
Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



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J & J SNACK FOODS
CORP. OF CALIFORNIA
5353 DOWNEY ROAD
VERNON, CA 90058

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CORP. OF CALIFORNIA
5353 DOWNEY ROAD
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1875 Century Park East, 1000
Los Angeles, CA 90067



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6000 CENTRAL HIGHWAY
PENNSAUKEN, NJ 08109



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