

NORTH LAW, P.C.
Hengameh S. Safaei (SBN 248048)
safaei@northlegalpc.com
12100 Wilshire Boulevard, 8th Floor
Los Angeles, California 90025
Telephone: (213) 868-3232
Facsimile: (213) 315-0162

Attorney for Plaintiff IRVING RUIZ,
on behalf of himself and all other aggrieved employees

Assigned for All Purposes
Judge William Claster
Dept. CX101

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

IRVING RUIZ, on behalf of himself and all
other aggrieved employees,

PLAINTIFF,

v.

APOLA 1 INC., a California corporation;
APOLA 2 INC., a California corporation;
APOLA 3 INC., a California corporation; and
DOES 1 through 50, inclusive,

DEFENDANTS.

CASE NO.: 30-2023-01368397-CU-OE-CXC

REPRESENTATIVE ACTION

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 *et seq*

Plaintiff IRVING RUIZ ("PLAINTIFF"), on behalf of himself and all other aggrieved employees, and as a private attorney general, based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, complains and hereby alleges as follows:

INTRODUCTION

1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of Defendants APOLA 1 INC. a California corporation; APOLA 2 INC., a California corporation; APOLA

1 3 INC., a California corporation; and DOES 1 through 50, inclusive (collectively, “DEFENDANTS”)
2 to recover civil penalties arising from unpaid wages earned and due, including but not limited to unpaid
3 and unlawfully calculated overtime compensation, unlawful meal and rest break policies and practices,
4 failure to pay all wages due to discharged or quitting employees, failure to maintain required records,
5 failure to provide complete and accurate itemized wage statements, and failure to timely pay wages
6 during employment.

7 **THE PARTIES**

8 2. PLAINTIFF is an individual over the age of eighteen (18) and is a resident of the State
9 of California. At all times relevant to this action, PLAINTIFF was employed by DEFENDANTS in the
10 County of Orange, State of California as an hourly, non-exempt employee.

11 3. PLAINTIFF is informed and believes, and thereon alleges, that defendant APOLA 1,
12 INC. (“APOLA 1”) is, and all times relevant to this action was, a corporation organized and existing
13 under the laws of the State of California. PLAINTIFF is further informed and believes, and based
14 thereon alleges, that defendant APOLA 1 is authorized to transact and conduct business in the State of
15 California and does transact and conduct business in the County of Orange, State of California. Further,
16 APOLA 1 maintains grounds, facilities, and offices in the County of Orange, State of California.

17 4. PLAINTIFF is informed and believes, and thereon alleges, that defendant APOLA 2,
18 INC. (“APOLA 2”) is, and all times relevant to this action was, a corporation organized and existing
19 under the laws of the State of California. PLAINTIFF is further informed and believes, and based
20 thereon alleges, that defendant APOLA 2 is authorized to transact and conduct business in the State of
21 California and does transact and conduct business in the County of Orange, State of California. Further,
22 APOLA 2 maintains grounds, facilities, and offices in the County of Orange, State of California.

23 5. PLAINTIFF is informed and believes, and thereon alleges, that defendant APOLA 3,
24 INC. (“APOLA 3”) is, and all times relevant to this action was, a corporation organized and existing
25 under the laws of the State of California. PLAINTIFF is further informed and believes, and based
26 thereon alleges, that defendant APOLA 3 is authorized to transact and conduct business in the State of
27
28

1 California and does transact and conduct business in the County of Orange, State of California. Further,
2 APOLA 3 maintains grounds, facilities, and offices in the County of Orange, State of California.

3 6. PLAINTIFF is informed and believes, and thereon alleges, that Defendants APOLA 1,
4 APOLA 2, and APOLA 3 own and operate fast casual Greek restaurants in various locations in
5 California under the names “Apola Greek Grill” or “Apola Gyro Grill.”

6 7. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times,
7 Defendants APOLA 1, APOLA 2, and APOLA 3 have operated as an integrated and single enterprise.
8 PLAINTIFF is informed and believes, and thereon alleges, that among other things, Defendants APOLA
9 1, APOLA 2, and APOLA 3 share the same officers and directors, and market from the same website.

10 8. PLAINTIFF is informed and believes that according to publicly released data, Defendant
11 APOLA 1 received at least two (2) federal Paycheck Protection Program (“PPP”) loans totaling over
12 \$166,000.¹ According to publicly released data, the full amount of these loans to APOLA 1, including
13 accrued interest, was forgiven.

14 9. PLAINTIFF is informed and believes that according to publicly released data, Defendant
15 APOLA 2 received at least two (2) federal Paycheck Protection Program (“PPP”) loans totaling over
16 \$178,000.² According to publicly released data, the full amount of these loans to APOLA 2, including
17 accrued interest, was forgiven.

18 10. At this time, the true names and capacities of defendants DOES 1 through 50, inclusive,
19 are unknown to PLAINTIFF, and PLAINTIFF therefore sues such defendants under fictitious names.
20 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is
21 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved
22 employees’ injuries and damages were proximately caused by the conduct of said DOE defendants.
23 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities
24 of said DOE defendants when such information is ascertained.

25
26
27 ¹ See, <https://projects.propublica.org/coronavirus/bailouts/search?q=apola+1&v=3>

28 ² See, <https://projects.propublica.org/coronavirus/bailouts/search?q=apola+1&v=3>

1 11. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
2 times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees.
3 PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action,
4 DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint
5 employers, subsidiaries, parents, principals, related entities, sister companies, co-conspirators,
6 authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each
7 defendant was dominated by his, her, or its codefendants, and each was the alter ego of the other.

8 12. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the
9 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in
10 furtherance of, their policies and practices of depriving PLAINTIFF and other aggrieved employees
11 their wage and hour rights, through methods which include, but are not limited to: failing to properly
12 pay overtime compensation; failing to pay minimum wages; failing to provide compliant meal periods
13 and failing to pay premium compensation in lieu thereof; failing to authorize and permit rest periods and
14 failing to pay premium compensation in lieu thereof; failing to timely pay wages during employment;
15 failing to timely pay wages upon separation of employment; failing to reimburse business expenses; and
16 failing to provide complete itemized statements for each pay period; all in violation of the California
17 Labor Code (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”) Wage Order(s),
18 including, but not limited to, IWC Wage Order 5-2001.

19 13. California courts recognize the definition of “employer” for purposes of enforcement of
20 the California Labor Code goes beyond the concept of traditional employment for the purpose of
21 preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs*, 49 Cal.4th 35, 65
22 (2010). California law also permits and recognizes the piercing of a corporate veil between sister
23 companies under the single enterprise rule. *Hasso v. Hapke*, 227 Cal.App.4th 107, 155 (2014). The
24 single enterprise rule applies where “there are two or more personalities, there is but one enterprise; and
25 that this enterprise has been so handled that it should respond, as a whole, for the debts of certain
26 component elements of it.” *Hasso*, 227 Cal.App.4th at 155; *see also Atempa v. Pedrazzani*, 27
27
28

1 Cal.App.5th 809, 820 (2018) (holding the owner of a company liable for PAGA penalties arising from
2 the company's wage and hour violations).

3 14. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,
5 each acting as agents and/or employees, and/or under the direction and control of, each of the other
6 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,
7 employment, and/or direction and control.

8 15. Defendants APOLA 1, APOLA 2, APOLA 3, and DOES 1 thorough 50, inclusive, are
9 collectively referred to herein as "DEFENDANTS."

10 16. DEFENDANTS are and at all times herein mentioned were, (a) conducting business in
11 the County of Orange, State of California, and (b) the employer of PLAINTIFF consistent with the
12 California Labor Code and Industrial Welfare Commission Wage Orders ("Wage Orders").

13 17. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
14 Labor Code section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are
15 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days
16 of work in any order of the Industrial Welfare Commission, or Labor Code sections 203, 226, 226.7,
17 1193.6, 1194, or 2802.

18 **JURISDICTION AND VENUE**

19 18. The Superior Court of the State of California has jurisdiction in this matter because
20 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
21 California and regularly conduct business in the State of California.

22 19. No federal question is at issue because the claims are based exclusively on California
23 state law.

24 20. Venue is proper in this judicial district and the County of Orange, California because
25 among other things, PLAINTIFF and other aggrieved employees performed work for DEFENDANTS
26 in the County of Orange; DEFENDANTS maintain grounds, facilities, and offices, and transact business
27 in the County of Orange; DEFENDANTS' unlawful policies, procedures, and practices, which are the
28

1 subject of this action were applied, at least in part, to PLAINTIFF and other aggrieved employees in the
2 County of Orange; and DEFENDANTS' unlawful acts and omissions occurred in the County of Orange.

3 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

4 21. PLAINTIFF was employed by DEFENDANTS from approximately September 2023 to
5 October 2023 as an hourly, non-exempt employee at DEFENDANTS' Greek restaurant located at 1560
6 S. Lewis Street in Anaheim, California. PLAINTIFF was a cook but he performed various other duties,
7 such as cleaning and washing. PLAINTIFF worked the night/graveyard shift.

8 22. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code
9 sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former
10 non-exempt aggrieved employees of DEFENDANTS in the State of California at any time within the
11 period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the
12 time this action settles or proceeds to final judgment (the "PAGA PENALTY PERIOD").³

13 23. In accordance with Labor Code section 2699.3, on or about October 16, 2023,
14 PLAINTIFF gave written notice to the California Labor and Workforce Development Agency
15 ("LWDA"), by filing a PAGA Notice online, a copy of which was sent by certified mail to
16 DEFENDANTS notifying them of the specific provisions of the Labor Code and IWC Wage Order(s)
17 alleged to have been violated, including the facts and theories to support the alleged violations.
18 PLAINTIFF'S PAGA Notice was sent by certified mail to DEFENDANTS on October 16, 2023.

19 24. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
20 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice.
21 Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of PLAINTIFF'S
22 PAGA Notice before filing this civil action, PLAINTIFF has complied with all of the requirements set
23 forth in Labor Code section 2699.3 to commence a representative action under the PAGA.

24 **PREDICATE VIOLATION ALLEGATIONS**

25 **Failure to Provide Complaint Meal Periods and Failure to Pay Premium Wages**

26 **(Labor Code §§ 226.7, 512; IWC Wage Order 5-2001, § 11)**

27 _____
28 ³ The statute of limitations may be further extended by six months per Judicial Council Emergency Rule No. 9.

1 25. Labor Code section 512 provides in relevant part, “An employer shall not employ an
2 employee for a work period of more than five hours per day without providing the employee with a meal
3 period of not less than 30 minutes, except that if the total work period per day of the employee is no
4 more than six hours, the meal period may be waived by mutual consent of both the employer and
5 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
6 without providing the employee with a second meal period of not less than 30 minutes, except that if the
7 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
8 of the employer and the employee only if the first meal period was not waived.”

9 26. Under California law, when an employee works for a work period of more than five (5)
10 hours, a meal period must be provided no later than the end of the employee’s fifth hour of work, *i.e.*,
11 no later than the start of the employee’s sixth hour of work. When an employee works for a period of
12 more than 10 hours, a second meal period must be provided no later than the end of the employee’s tenth
13 hour of work, *i.e.*, no later than the start of the employee’s eleventh hour of work. *See Brinker*
14 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

15 27. Labor Code section 226.7, subdivision (a) states, “An employer shall not require an
16 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
17 or applicable regulation, standard, or order of the Industrial Welfare Commission”

18 28. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
19 PENALTY PERIOD, as part of DEFENDANTS’ systematic illegal policies, procedures, and practices,
20 DEFENDANTS failed to provide timely, compliant, off-duty meal periods to PLAINTIFF and other
21 aggrieved employees in accordance with Labor Code sections 226.7 and 512 and the applicable IWC
22 Wage Order(s), including IWC Wage Order 5-2001, § 11.

23 29. DEFENDANTS failed to provide PLAINTIFF all statutory compliant meal periods
24 throughout his entire employment.

25 30. PLAINTIFF is further informed and believes, and based thereon alleges, that during the
26 PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to second
27 meal periods when PLAINTIFF and aggrieved employees worked more than ten (10) hours per day.

1 31. Labor Code section 226.7, subdivision (b), provides that if an employer fails to provide
2 an employee a meal period in accordance with an applicable order of the IWC, the employer shall pay
3 the employee one (1) additional hour of pay at the employee's regular rate of compensation for each
4 work day that the meal period is not provided.

5 32. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
6 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal period
7 violations.

8 33. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
9 PENALTY PERIOD, DEFENDANTS further violated Labor Code sections 226.7 and 512 and the
10 applicable IWC Wage Order(s) by failing to compensate PLAINTIFF and other aggrieved employees
11 who were not provided with a compliant statutory meal period one (1) additional hour of compensation
12 at each employee's regular rate of pay for each workday that a compliant meal period was not provided.

13 **Failure to Provide Compliant Rest Periods and Failure to Pay Premium Wages**

14 **(Labor Code §§ 226.7; IWC Wage Order 5-2001, § 12)**

15 34. Labor Code sections 226.7, 516, and 558 and the applicable IWC Wage Order(s)
16 establish the right of employees to be provided a rest period of at least ten (10) minutes for each four (4)
17 hour period, or major fraction thereof. At all relevant times, as part of DEFENDANTS' systematic
18 illegal policies, procedures, and practices, DEFENDANTS failed to provide compliant rest periods to
19 PLAINTIFF and other aggrieved employees as required pursuant to Labor Code section 226.7, and the
20 applicable IWC Wage Order(s). DEFENDANTS failed to authorize and permit PLAINTIFF to take
21 statutory rest breaks throughout his entire employment.

22 35. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
23 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to third rest breaks
24 when PLAINTIFF and other aggrieved employees worked more than ten (10) hours per day.

25 36. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide
26 an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission,
27
28

1 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of
2 compensation for each work day that the rest period is not provided.

3 37. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
4 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break
5 violations.

6 38. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
7 PENALTY PERIOD, DEFENDANTS further violated Labor Code section 226.7 and the applicable
8 IWC Wage Order(s) by failing to pay PLAINTIFF and other aggrieved employees who were not
9 provided with a compliant rest period, in accordance with the applicable IWC Wage Order, one (1)
10 additional hour of compensation at each employee's regular rate of pay for each workday that a
11 compliant rest period was not provided.

12 **Failure to Pay Minimum Wages**

13 **(Labor Code §§ 1194, 1197; IWC Wage Order 5-2001, § 4)**

14 39. Under Labor Code sections 1194 and 1197 and IWC Wage Order 5-2001, § 4, payment
15 to an employee of less than the applicable minimum wage for all hours worked in a payroll period is
16 unlawful.

17 40. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
18 PENALTY PERIOD, and in violation of Labor Code sections 1194 and 1197 and IWC Wage Order 5-
19 2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other aggrieved employees the applicable
20 minimum wages for all hours worked in a payroll period by, among other things: requiring, suffering,
21 or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, suffering, or
22 permitting PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and
23 inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to
24 properly maintain PLAINTIFF'S and other aggrieved employees' records; failing to provide accurate
25 itemized wage statements to PLAINTIFF and other aggrieved employees for each pay period; and other
26 methods to be discovered.

27 **Failure to Pay Overtime Wages**

(Labor Code §§ 510, 1194, 1198; IWC Wage Order 5-2001, § 3)

41. Under Labor Code sections 510 and 1194 and the applicable IWC Wage Order(s), DEFENDANTS are required to compensate aggrieved employees for all overtime which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day or forty (40) hours per week. “The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee. *See*, Division of Labor Standards Enforcement - Enforcement Policies and Interpretations Manual, Section 49.1.2.

42. On information and belief, DEFENDANTS required aggrieved employees to work more than eight (8) hours per day and/or forty (40) hours per week. On information and belief, DEFENDANTS failed to compensate aggrieved employees for all hours worked beyond eight (8) hours per day and/or forty (40) hours per week at the rate of one and half times the regular rate of pay because, on information and belief, DEFENDANTS failed to include additional remuneration, including shift premium compensation, when calculating the regular rate of pay for purposes of paying overtime wages.

43. PLAINTIFF and other aggrieved employees are current and former non-exempt employees of DEFENDANTS entitled to the protections of Labor Code sections 510 and 1194 and the applicable IWC Wage Order(s). PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS failed to compensate aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order(s) by, among other things, failing to include additional remuneration, including shift premium compensation, when calculating the regular rate of pay for purposes of paying overtime wages.

44. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate aggrieved employees for all overtime wages earned in violation of Labor Code sections 510, 1194 and 1198 and the applicable IWC Wage Order(s).

Failure to Timely Pay Wages During Employment

(Labor Code § 204)

1 45. Under Labor Code section 204, for all labor performed between the 1st and 15th days of
2 any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th
3 and 26th day of the month during which the labor was performed. Labor Code section 204 provides that
4 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are
5 required to pay their nonexempt employees between the 1st and 10th day of the following calendar
6 month.

7 46. Labor Code section 204 further provides that all wages earned for labor in excess of the
8 normal work period shall be paid no later than the payday of the next regular payroll period.

9 47. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
10 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to timely pay PLAINTIFF and
11 other aggrieved employees all the wages for labor performed by the next regular payroll period as
12 required by Labor Code section 204.

13 **Failure to Pay All Wages Due Upon Separation of Employment**

14 **(Labor Code §§ 201, 202, 203)**

15 48. Under Labor Code sections 201, 202 and 203, DEFENDANTS are required to pay all
16 earned and unpaid wages to an employee who is discharged. Labor Code section 201 provides that if
17 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge
18 are due and payable immediately. Under Labor Code section 202, DEFENDANTS are required to pay
19 all accrued wages due to an employee no later than 72 hours after the employee quits, unless the
20 employee provided 72 hours previous notice of his or her intention to quit, in which case the employee
21 is entitled to his or wages at the time of quitting.

22 49. Labor Code section 203 provides that if an employer willfully fails to pay, in accordance
23 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the
24 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
25 thirty (30) days.

26 50. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
27 PENALTY PERIOD, and in violation of Labor Code sections 201 and 202, DEFENDANTS willfully
28

1 failed to timely pay accrued wages and other compensation to PLAINTIFF and other aggrieved
2 employees who were discharged or who quit.

3 **Failure to Furnish Accurate Itemized Wage Statements**
4 **(Labor Code § 226(a); IWC Wage Order No. 5-2001, § 7)**

5 51. During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue
6 to fail to provide timely and accurate itemized wage statements in writing showing each employee's
7 gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece
8 rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive
9 dates of the period for which the employee is paid, the name of the employee and only the last four digits
10 of his or her social security number or employee identification number, the name and address of the
11 legal entity or entities employing PLAINTIFF and other aggrieved employees, and all applicable hourly
12 rates in effect during each pay period and the corresponding number of hours worked at each hourly
13 rate, in violation of Labor Code section 226, subdivision (a) and IWC Wage Order No. 5-2001 § 7.

14 52. During the PAGA PENALTY PERIOD, and as a result of DEFENDANTS' unlawful
15 policies and practices and failure to pay all earned wages DEFENDANTS knowingly and intentionally
16 failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage
17 statements in accordance with Labor Code section 226, subdivision (a).

18 53. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees
19 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage
20 statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from
21 the wage statement alone any of the following: gross wages earned, total hours worked by the employee,
22 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
23 rate basis, all deductions, provided that all deductions made on written orders of the employee may be
24 aggregated and shown as one item, net wages earned, the inclusive dates of the period for which the
25 employee is paid, the name of the employee and the last four digits of his or her social security number
26 or an employee identification number other than a social security number, the name and address of the
27
28

1 legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee.

3 **Failure to Maintain Accurate Records**

4 **(Labor Code §§ 226(a), 1174(d); IWC Wage Order 5-2001, § 7)**

5 54. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
6 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and
7 due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor
8 Code sections 226, subdivision (a) and 1174, subdivision (d) and IWC Wage Order 5-2001, § 7,
9 including but not limited to the following records: total daily hours worked by each employee; applicable
10 rates of pay; all deductions; meal periods; time records showing when each employee begins and ends
11 each work period; and accurate itemized statements.

12 **Failure to Reimburse Business Expenses**

13 **(Labor Code § 2802; IWC Wage Order 5-2001, § 9)**

14 55. Labor Code section 2802 requires an employer to indemnify an employee for all
15 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
16 or her duties, or of his or her obedience to the directions of the employer.

17 56. During the PAGA PENALTY PERIOD, PLAINTIFF and, on information and belief,
18 other aggrieved employees incurred necessary business expenses and costs that were not reimbursed by
19 DEFENDANTS. Among other things, DEFENDANTS required PLAINTIFF and, on information and
20 belief, other aggrieved employees to use their personal cellular phones in the course of performing their
21 required job duties without reimbursement. DEFENDANTS required PLAINTIFF use his personal cell
22 phones to respond to and communicate with DEFENDANTS regarding work matters, such as food
23 orders and recipes. On information and belief, DEFENDANTS do not have a policy or practice in place
24 for reimbursement of business expenses.

25 57. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
26 PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to indemnify PLAINTIFF and all
27 other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the
28

1 discharge of their duties while working under the direction of DEFENDANTS including, but not limited
2 to, failing to reimburse PLAINTIFF and all aggrieved employees for cellular phone usage.

3 58. DEFENDANTS' failure is a violation of Labor Code section 2802 and IWC Wage Order
4 5-2001, § 9(B).

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

7 **(Labor Code §§ 2698 et seq.)**

8 **(AGAINST ALL DEFENDANTS)**

9 59. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
10 the allegations in paragraphs 1 through 58, above.

11 60. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code section 2699,
12 subdivision (c), and a proper representative to bring a civil action on behalf of himself and other current
13 and former non-exempt employees of DEFENDANTS under the procedures specified in Labor Code
14 sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the alleged
15 Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY PERIOD.

16 61. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
17 PAGA.

18 62. Pursuant to Labor Code sections 2698 through 2699.5, PLAINTIFF seeks to recover civil
19 penalties from DEFENDANTS in a representative action for the violations set forth above which
20 include, but are not limited to, violations of Labor Code sections 201, 202, 203, 204, 226, subdivision
21 (a), 226.7, 510, 512, 1174, subdivision (d), 1194, 1194.2, 1197, 1198, and 2802.

22 63. Under Labor Code section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
23 on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically
24 provided which include, but are not limited to, the following:

25 a. Under Labor Code section 210, DEFENDANTS are subject to a civil penalty in the
26 amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) per
27 employee for violations in subsequent pay periods for violations of Labor Code section 204;

1 b. Under Labor Code section 226.3, DEFENDANTS are subject to a civil penalty in the
2 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial pay period
3 where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved employee for violations in
4 subsequent pay periods for violations of Labor Code section 226, subdivision (a);

5 c. Under Labor Code section 558, subdivision (a), “[a]ny employer or other person acting
6 on behalf of an employer who violates, or causes to be violated, a Section of this chapter or any provision
7 regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor
8 Code sections 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided
9 by law, of fifty dollars (\$50.00) for initial violations for each employee for each pay period for which
10 the employee was underpaid and one hundred dollars (\$100.00) for each subsequent violation for each
11 employee for each pay period for which the employee was underpaid;

12 d. Under Labor Code section 1197.1, an employer who pays or causes to be paid to any
13 employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil
14 penalty as follows: for any initial violation that is intentionally committed, one hundred dollars
15 (\$100.00) for each underpaid employee for each pay period for which the employee is underpaid; and
16 for each subsequent violation of the same offense, two hundred fifty dollars (\$250.00) for each underpaid
17 employee for each pay period for which the employee is underpaid regardless of whether or not the
18 initial violation was intentionally committed; and

19 e. Under Labor Code section 1174.5, for violations of Labor Code section 1174, subdivision
20 (d), DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500.00).

21 64. PLAINTIFF further seeks civil penalties based on DEFENDANTS’ violations of Labor
22 Code provisions for which a civil penalty is not specifically provided. Labor Code section 2699,
23 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically
24 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved
25 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved
26 employee per pay period for each subsequent violation.

65. PLAINTIFF seeks such civil penalties in accordance with Labor Code section 2699, subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to Labor Code sections 201, 202, 203, 226.7, 1194, 1197, and 1198, and 2802.

66. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law including under Labor Code section 2699, subdivision (g)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees,
prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

1. For civil penalties according to proof and all penalties authorized under the PAGA including under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699, subdivisions (a) and (f);
2. For interest at the legal rate to the extent allowed by law;
3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor Code section 2699, subdivision (g) and any other applicable provisions providing for attorneys' fees and costs; and
4. For such further and additional relief as allowed by law or which the Court deems just and proper.

DATED: December 20, 2023

Respectfully submitted,

NORTH LAW, P.C.

Rafael

Hengameh S. Safaei
Attorneys for Plaintiff IRVING RUIZ, on
behalf of himself and all other aggrieved
employees