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FILED
Superior Court of California
County of Los Angeles
12/19/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Miro Deputy

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

YAJAIRA OCHOA, individually, and on
behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

FRESNO FOODS, LLC, a California
limited liability company; NEWCO
FOODS, INC., a California corporation;
YOSI FOODS LLC, a California limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23STCV23379

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Yajaira Ochoa, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Encino, County of Los Angeles, in accordance with California Corporations Code
7 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
8 Defendants employ persons in this county, and thus a substantial portion of the transactions
9 and occurrences related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Yajaira Ochoa is a resident of Fresno, in Fresno County, California.
12 Defendants employed Plaintiff as an hourly paid, non-exempt Team Member and Team
13 Leader from approximately June 2021 to June 2023. During her employment, Plaintiff
14 typically worked eight (8) hours or more per day and five (5) days per week. Plaintiff's
15 primary job duties included, without limitation, preparing ingredients, taking orders, cooking
16 food, balancing cash drawers and the restaurant safe, cleaning, and re-stocking inventory.

17 5. FRESNO FOODS, LLC was and is, upon information and belief, a California
18 limited liability company, and at all times hereinafter mentioned, an employer whose
19 employees are engaged throughout this county and the State of California.

20 6. NEWCO FOODS, INC. was and is, upon information and belief, a California
21 corporation, and at all times hereinafter mentioned, an employer whose employees are
22 engaged throughout this county and the State of California.

23 7. YOSI FOODS LLC was and is, upon information and belief, a California
24 limited liability company, and at all times hereinafter mentioned, an employer whose
25 employees are engaged throughout this county and the State of California.

26 8. Plaintiff is unaware of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
28 amend the complaint and serve such fictitiously named Defendants once their names and

capacities become known.

9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of FRESNO FOODS, LLC; NEWCO FOODS, INC.; and YOSI FOODS LLC at all relevant times.

10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, FRESNO FOODS, LLC; NEWCO FOODS, INC.; YOSI FOODS LLC; and/or DOES 1 through 10 (collectively, “Defendants” or “FRESNO FOODS”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

13. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and class members. Each Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and class members to work and/or “engaged” Plaintiff and class members so as to create a common-law employment relationship. As joint employers of Plaintiff and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available

1 to Plaintiff and class members under the law.

2 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
3 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
4 members because Defendants have:

5 (a) jointly exercised meaningful control over the work performed by
6 Plaintiff and class members;

7 (b) jointly exercised meaningful control over Plaintiff's and class members'
8 wages, hours, and working conditions, including the quantity, quality
9 standards, speed, scheduling, and operative details of the tasks
10 performed by Plaintiff and class members;

11 (c) jointly required that Plaintiff and class members perform work which is
12 an integral part of Defendants' businesses; and

13 (d) jointly exercised control over Plaintiff and class members as a matter of
14 economic reality in that Plaintiff and class members were dependent on
15 Defendants, who shared the power to set the wages of Plaintiff and class
16 members and determined their working conditions, and who jointly
17 reaped the benefits from the underpayment of their wages and
18 noncompliance with other statutory provisions governing their
19 employment.

20 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
21 there has existed a unity of interest and ownership between Defendants such that any
22 individuality and separateness between the entities has ceased.

23 16. FRESNO FOODS, LLC; NEWCO FOODS, INC.; YOSI FOODS LLC; and
24 DOES 1 through 10 are therefore alter egos of each other.

25 17. Adherence to the fiction of the separate existence of Defendants would permit
26 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
27 from liability for the wrongful acts committed by them under the name FRESNO FOODS.

28 18. Plaintiff further alleges, upon information and belief, that Defendants FRESNO

FOODS, LLC; NEWCO FOODS, INC.; and YOSI FOODS LLC are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/>), FRESNO FOODS, LLC; NEWCO FOODS, INC.; and YOSI FOODS LLC share the same principal address and mailing address of "4917 GENESTA AVE, ENCINO, CA 91316";
- (b) According to their most recent "Statement of Information" forms filed with the California Secretary of State, FRESNO FOODS, LLC and NEWCO FOODS, INC share the same manager, member, officer, and/or director, Sudesh Sood;
- (c) According to their most recent "Statement of Information" forms filed with the California Secretary of State, FRESNO FOODS, LLC and YOSI FOODS LLC share the same manager or member, Behzad Nematzadeh;
- (d) On the California Secretary of State's website, FRESNO FOODS, LLC; NEWCO FOODS, INC.; and YOSI FOODS LLC share the same agent for service of process, Pankaj Bhatia; and
- (e) On information and belief, FRESNO FOODS, LLC; NEWCO FOODS, INC.; and YOSI FOODS LLC utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

19. Defendants own and operate approximately 28 Jack in the Box franchise restaurant locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their company headquarters in Encino, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

20. In particular, Plaintiff and class members, on information and belief, received

1 the same standardized documents and/or written policies. Upon information and belief, the
2 usage of standardized documents and/or written policies, including new-hire documents,
3 indicate that Defendants dictated policies at the corporate level and implemented them
4 company-wide, regardless of their employees' assigned locations or positions. Upon
5 information and belief, Defendants set forth uniform policies and procedures in several
6 documents provided at an employee's time of hire.

7 21. Upon information and belief, Defendants maintain a centralized Payroll
8 department at their company headquarters in Encino, California, which processes payroll for
9 all non-exempt, hourly paid employees working for Defendants at their various locations in
10 California, including Plaintiff and class members. Based upon information and belief,
11 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
12 employees in California, irrespective of their work locations. Upon information and belief,
13 Defendants process payroll for departing employees in the same manner throughout the State
14 of California, regardless of the manner in which each employee's employment ends.

15 22. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

17 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
19 and advisors knowledgeable about California labor and wage law, employment and personnel
20 practices, and about the requirements of California law.

21 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
22 members were not paid for all hours worked because all hours worked were not recorded.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive certain wages for
25 overtime compensation and that they were not receiving certain wages for overtime
26 compensation.

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and/or class members were entitled to be paid at a regular

1 rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
2 premiums, that included as eligible income all remuneration required by law, including but not
3 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
4 forms of compensation, but failed to include all forms of remuneration in calculating the
5 regular rate of pay.

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive at least minimum
8 wages for compensation and that they were not receiving at least minimum wages for work
9 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
10 and class members were not paid at least minimum wages for work done off-the-clock.

11 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to meal periods in
13 accordance with the California Labor Code and applicable IWC Wage Order or payment of
14 one (1) additional hour of pay at their regular rates of pay when they were not provided with
15 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
16 were not provided with all meal periods or payment of one (1) additional hour of pay at their
17 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
18 period.

19 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to rest periods in
21 accordance with the California Labor Code and applicable IWC Wage Order or payment of
22 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
23 permitted to take a compliant rest period and that Plaintiff and class members were not
24 authorized and permitted to take compliant rest periods or provided with payment of one (1)
25 additional hour of pay at their regular rates of pay when they were not authorized and
26 permitted to take a compliant rest period.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive complete and

1 accurate wage statements in accordance with California law. In violation of the California
2 Labor Code, Plaintiff and class members were not provided complete and accurate wage
3 statements.

4 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that they had a duty to maintain accurate and complete payroll records in
6 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
7 knowingly, and intentionally failed to do so.

8 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to timely payment of all
10 wages earned upon termination of employment. In violation of the California Labor Code,
11 Plaintiff and class members did not receive payment of all wages due, including, but not
12 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
13 permissible time periods.

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to timely payment of wages
16 during their employment. In violation of the California Labor Code, Plaintiff and class
17 members did not receive payment of all wages, including, but not limited to, overtime wages,
18 minimum wages, and/or meal and rest period premiums, within permissible time periods.

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and/or class members were entitled to receive sick leave
21 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
22 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
23 violation of the California Labor Code, Defendants failed to include all forms of remuneration
24 in calculating the regular rate of pay for sick leave pay.

25 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to one day's rest in seven.
27 In violation of the California Labor Code, Defendants required Plaintiff and class members to
28 work more than six consecutive days without a day of rest, where the total hours worked

1 exceeded 30 hours in any week or six hours in any one day thereof.

2 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to receive split shift premium
4 pay when Defendants required Plaintiff and class members to return to work for an additional
5 shift in the same day, after having been clocked out for more than an hour. In violation of the
6 California Labor Code and applicable IWC Wage Order, Defendants did not pay Plaintiff and
7 class members all split-shift premiums due.

8 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and/or class members were entitled to receive all reporting
10 time pay when Plaintiff and/or class members were required to report to work but were put to
11 work for less than half of their usual or scheduled shift. In violation of the California Labor
12 Code and applicable IWC Wage Order, Plaintiff and/or class members were not paid all
13 reporting time pay.

14 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive full
16 reimbursement for all business-related expenses and costs they incurred during the course and
17 scope of their employment and that they did not receive full reimbursement of applicable
18 business-related expenses and costs incurred.

19 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiff and class members with written notice of the material terms of their employment with
22 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

23 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate
25 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
26 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
27 falsely represented to Plaintiff and class members that they were properly denied wages, all in
28 order to increase Defendants' profits.

PAGA REPRESENTATIVE ALLEGATIONS

41. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

43. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.
- (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 notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA Notice”) within sixty (60) calendar days of

1 the postmark date of the aggrieved employee's notice. Upon receipt of
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
3 (65) calendar days of the postmark date of the aggrieved employee's
4 notice, the aggrieved employee may commence a civil action pursuant
5 to California Labor Code section 2699 to recover civil penalties.

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

- 10 (a) The aggrieved employee or representative shall give written notice by
11 online filing with the LWDA and by certified mail to the employer of
12 the specific provisions of the California Labor Code alleged to have
13 been violated (other than those listed in Section 2699.5), including the
14 facts and theories to support the alleged violation.
- 15 (b) An aggrieved employee's notice filed with the LWDA pursuant to
16 2699.3(c) and any employer response to that notice shall be
17 accompanied by a filing fee of seventy-five dollars (\$75).
- 18 (c) The employer may cure the alleged violation within thirty-three (33)
19 calendar days of the postmark date of the notice sent by the aggrieved
20 employee or representative. The employer shall give written notice
21 within that period of time by certified mail to the aggrieved employee or
22 representative and by online filing with the LWDA if the alleged
23 violation is cured, including a description of actions taken, and no civil
24 action pursuant to Section 2699 may commence. If the alleged violation
25 is not cured within the 33-day period, the aggrieved employee may
26 commence a civil action pursuant to Section 2699.

27 46. On October 5, 2023, Plaintiff provided written notice by online filing to the
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
4 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
5 Plaintiff PAGA Case Number LWDA-CM-985958-23. A true and correct copy of Plaintiff's
6 written notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

7 47. As of the filing date of this amended complaint, over 65 days have passed since
8 Plaintiff sent the notices described above to the LWDA, and the LWDA has not responded
9 that it intends to investigate Plaintiff's claims and Defendants have not cured the violations.

10 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
13 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

23 50. Defendants, at all times relevant to this complaint, were employers or persons
24 acting on behalf of an employer(s) who violated Plaintiff's and other aggrieved employees'
25 rights by violating various sections of the California Labor Code as set forth above.

26 51. As set forth below, Defendants have violated numerous provisions of both the
27 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
28 Order.

52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, 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 Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

54. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

55. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

56. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

57. Members of the Class and Subclass are referred to herein as "class members."

58. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

59. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime

- 1 compensation to Plaintiff and class members;
- 2 (b) Whether Defendants failed to include all forms of remuneration in the
- 3 regular rate of pay as required by law for purposes of paying overtime
- 4 wages and/or meal and rest period premiums to Plaintiff and/or class
- 5 members;
- 6 (c) Whether Defendants failed to pay Plaintiff and class members at least
- 7 minimum wages for all hours worked;
- 8 (d) Whether Defendants failed to provide Plaintiff and class members with
- 9 meal periods;
- 10 (e) Whether Defendants failed to authorize and permit Plaintiff and class
- 11 members to take rest periods;
- 12 (f) Whether Defendants provided Plaintiff and class members with
- 13 complete and accurate wage statements as required by California Labor
- 14 Code section 226(a);
- 15 (g) Whether Defendants maintained accurate payroll records as required by
- 16 California Labor Code section 1174(d);
- 17 (h) Whether Defendants failed to pay earned overtime wages, minimum
- 18 wages, and/or meal and rest period premiums due to Plaintiff and class
- 19 members upon their discharge;
- 20 (i) Whether Defendants failed to timely pay overtime wages, minimum
- 21 wages, and/or meal and rest period premiums due to Plaintiff and class
- 22 members during their employment;
- 23 (j) Whether Defendants failed to properly calculate the regular rate of pay
- 24 upon which Plaintiff's and/or class members' sick leave rates of pay
- 25 were based;
- 26 (k) Whether Defendants failed to provide Plaintiff and class members one
- 27 day's rest in seven;
- 28 (l) Whether Defendants required Plaintiff and class members to return to

1 work for an additional shift in the same day, after having been clocked
2 out for more than an hour, without paying Plaintiff and class members
3 an addition hour of pay at the minimum wage as required by California
4 Code of Regulations, Title 8, section 11050(4)(C);

5 (m) Whether Defendants required Plaintiff and/or class members to report to
6 work, but failed to provide them with work or provided them with less
7 than half their usual or scheduled day's work, without properly
8 compensating them as required by California Code of Regulations, Title
9 8, section 11050(5);

10 (n) Whether Defendants failed to reimburse Plaintiff and class members for
11 necessary and required business-related expenditures and/or losses
12 incurred by them in the scope of their employment;

13 (o) Whether Defendants failed to provide written notice of information
14 material to Plaintiff's and class members' employment with Defendants;

15 (p) Whether Defendants engaged in unlawful and unfair business practices
16 in violation of California Business & Professions Code sections 17200,
17 *et seq.*; and

18 (q) The appropriate amount of damages, restitution, or monetary penalties
19 resulting from Defendants' violations of California law.

20 60. There is a well-defined community of interest in the litigation and the class
21 members are readily ascertainable:

22 (a) Numerosity: The class members are so numerous that joinder of all
23 members would be unfeasible and impractical. The membership of the
24 entire class is unknown to Plaintiff at this time; however, the class is
25 estimated to be greater than one hundred (100) individuals and the
26 identity of such membership is readily ascertainable by inspection of
27 Defendants' employment records.

28 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately

1 protect the interests of each class member with whom she has a well-
2 defined community of interest, and Plaintiff's claims (or defenses, if
3 any) are typical of all class members as demonstrated herein.

4 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
5 protect the interests of each class member with whom she has a well-
6 defined community of interest and typicality of claims, as demonstrated
7 herein. Plaintiff acknowledges that she has an obligation to make
8 known to the Court any relationship, conflicts or differences with any
9 class member. Plaintiff's attorneys, the proposed class counsel, are
10 versed in the rules governing class action discovery, certification, and
11 settlement. Plaintiff has incurred, and throughout the duration of this
12 action, will continue to incur costs and attorneys' fees that have been,
13 are, and will be necessarily expended for the prosecution of this action
14 for the substantial benefit of each class member.

15 (d) Superiority: The nature of this action makes the use of class action
16 adjudication superior to other methods. A class action will achieve
17 economies of time, effort, and expense as compared with separate
18 lawsuits, and will avoid inconsistent outcomes because the same issues
19 can be adjudicated in the same manner and at the same time for the
20 entire class.

21 (e) Public Policy Considerations: Employers in the State of California
22 violate employment and labor laws every day. Current employees are
23 often afraid to assert their rights out of fear of direct or indirect
24 retaliation. Former employees are fearful of bringing actions because
25 they believe their former employers might damage their future
26 endeavors through negative references and/or other means. Class
27 actions provide the class members who are not named in the complaint
28 with a type of anonymity that allows for the vindication of their rights

1 while simultaneously protecting their privacy.

2 **FIRST CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

4 **(Against all Defendants)**

5 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 62. Labor Code section 1198 makes it illegal to employ an employee under
8 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
9 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
10 shall be the . . . standard conditions of labor for employees. The employment of any employee
11 . . . under conditions of labor prohibited by the order is unlawful.”

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

16 64. Specifically, the applicable IWC Wage Order provides that Defendants are and
17 were required to pay Plaintiff and class members working more than eight (8) hours in a day
18 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
19 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
20 workweek.

21 65. The applicable IWC Wage Order further provides that Defendants are and were
22 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
23 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
24 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
25 employee, including nondiscretionary bonuses and incentive pay.

26 66. California Labor Code section 510 codifies the right to overtime compensation
27 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
28 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the

seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

67. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class members 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 (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

68. First, during the relevant period, Defendants had, and continue to have, a company-wide policy of discouraging and impeding Plaintiff and class members 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 Defendants' use of labor budgets and assignment of heavy workloads (*see infra*), led Plaintiff and class members to work off-the-clock before and after their scheduled shift times, and on their days off. For example, when Plaintiff arrived for her shifts, Defendants' management often required her to start working immediately, for up to 30 minutes, before she was able to clock in because management wanted certain tasks, such as counting cash, to be done at the beginning of shifts. In addition, Defendants' management often clocked out Plaintiff at her scheduled shift end-time and required her to continue attending to customers and completing other work duties for up to 30 minutes to help the next shift. Plaintiff was told she could not stay clocked in because overtime hours were limited by the labor budget. As a further example, Defendants' managers often called Plaintiff on her personal cellular phone regarding work-related matters, such as to ask her to contact other employees and to discuss coverage issues, on her days off and before and after her shifts. Additionally, about once per month for approximately two (2) hours per instance, Plaintiff was required to complete online courses and/or trainings on new menu items, upgraded machinery, and updated procedures on her days off. This off-the-clock work could have been recorded by Defendants, but they refused to do so to avoid payment of additional wages to Plaintiff and class members. Thus, Defendants

1 failed to track all of the time that employees spent working before and after their scheduled
2 shifts, and Plaintiff and class members received no compensation for this time.

3 69. Second, Defendants utilized, and continue to utilize, a uniform timekeeping
4 system that shut down and locked out employees during a 5-10 minute “reset” at 4:00 a.m.
5 each day. If Plaintiff’s and class members’ shifts were scheduled to end during the “reset,”
6 Defendants’ management required them to clock out up to 10 minutes prior to the “reset” of
7 the point-of-sale (“POS”) machines that Plaintiff and class members used to clock in and
8 clock out. As a result, Plaintiff and class members were forced to clock out and continue
9 working while off-the-clock until the end of their scheduled shifts or when they were released
10 by management. For example, when Plaintiff was scheduled to work an overnight shift,
11 management required her to clock out at around 3:50 a.m. and continue working until the end
12 of her shift at 4:00 a.m. or, as stated above, until she was permitted to leave by management,
13 time for which she was not paid. Additionally, on information and belief, Defendants’
14 timekeeping system did not keep track of missed meal periods while it was shut down and/or
15 “resetting.” Consequently, Defendants did not record all hours worked (including during meal
16 periods) and Plaintiff and class members performed work for which they were not paid.

17 70. Moreover, because Defendants’ timekeeping system was integrated with the
18 company’s POS system and only two (2) monitors were available for clocking in and out,
19 Plaintiff and class members would sometimes have to wait to clock in for the start of their
20 shifts, because other employees were using the POS system to handle customer transactions
21 and/or clocking in or out. For instance, Plaintiff was required to wait several minutes off-the-
22 clock and under Defendants’ control until a POS monitor was available for clocking-in. Thus,
23 Plaintiff and class members performed work that was not recorded, time for which they were
24 not paid.

25 71. Third, as stated, Defendants had, and continue to have, a company-wide policy
26 of strictly staffing their restaurant locations based on the labor hours allocated by each
27 location’s labor or payroll budget set by corporate. This practice of labor budgeting and/or
28 limited payroll allocation, combined with the assignment of heavy workloads, has resulted in

1 chronic understaffing and a lack of adequate meal period coverage, because there were too
2 few employees on duty to handle the workload and attend to customers. Moreover,
3 Defendants have a practice of failing to adhere to a schedule for meal periods, which further
4 caused Plaintiff and class members to not be relieved of their duties for compliant meal
5 periods. As a result of this insufficient meal period coverage, Plaintiff and class members
6 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
7 entitled to receive a meal period. For example, Plaintiff worked through most of her meal
8 periods entirely because there was an inadequate number of employees to take over her job
9 duties while she took her meal periods.

10 72. Fourth, because Defendants frowned upon employees accruing meal period
11 penalties, Defendants' management pressured employees to clock out for meal periods to
12 reflect compliant meal periods and/or adjusted employee time records, regardless of whether
13 they had received a compliant meal period or not, in order to strictly limit meal penalties that
14 would need to be paid by Defendants. In addition, Defendants sometimes pressured Plaintiff
15 and class members to clock out for a 45-minute meal period or adjusted employee time
16 records to reflect 45-minute meal periods, and required them to continue working during that
17 time.

18 73. Defendants knew or should have known that, as a result of these company-wide
19 practices and/or policies, Plaintiff and class members were performing their assigned duties
20 off-the-clock before and after their shifts and during meal periods, and were suffered or
21 permitted to perform work for which they were not paid. Because Plaintiff and class members
22 worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of
23 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
24 members were not paid overtime wages for all of the overtime hours they actually worked.

25 74. Defendants' failure to pay Plaintiff and class members the balance of overtime
26 compensation, as required by California law, violates the provisions of California Labor Code
27 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
28 members are entitled to recover from Defendants their unpaid overtime compensation, as well

as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

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

76. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 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, § 11050(2)(K) (defining "Hours Worked").

77. As set forth above, as a result of Defendants' policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock before and after their scheduled shift start- and end-times and on their days off to complete their tasks, such as counting the cash drawer, attending to customers, responding to phone calls from Defendants' management about work-related matters, and completing online courses and/or trainings. Moreover, as set forth above, Defendants utilized a timekeeping system that automatically locked out employees working overnight shifts during a "reset" at 4:00 a.m., for which Defendants' management required Plaintiff and class members to clock out before their scheduled shift end-time and continue working off-the-clock while the system was resetting. Furthermore, as stated, because Defendants' timekeeping system was integrated with the company's POS system, Plaintiff and class members sometimes had to wait to clock in for the start of their shifts when other employees were using the POS system to handle customer transactions or were clocking in or out themselves. Defendants failed to track this time Plaintiff and class members spent working

1 off-the-clock, and thus, Plaintiff and class members received no compensation for this time.

2 78. Second, as set forth above, due to Defendants' company-wide practice of
3 utilizing labor budgets, understaffing, assignment of heavy workloads, failure to adhere to a
4 schedule for meal periods, and/or subsequent lack of meal period coverage, Plaintiff and class
5 members were impeded from taking all uninterrupted meal periods to which they were entitled
6 and were required to work off-the-clock. Further, to limit the meal penalties that Defendants
7 would otherwise owe, Defendants pressured Plaintiff and class members to clock out for meal
8 periods and/or adjusted employee time records to reflect compliant meal periods, but required
9 them to continue working, sometimes for up to 45 minutes, time for which they were not paid.

10 79. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
11 and class members. To the extent that these off-the-clock hours did not qualify for overtime
12 premium payment, Defendants did not pay at least minimum wages for those hours worked
13 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
14 1198.

15 80. Defendants' failure to pay Plaintiff and class members minimum wages violates
16 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
17 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
18 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
19 interest thereon.

20 **THIRD CAUSE OF ACTION**

21 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period**

22 **Violations**

23 **(Against all Defendants)**

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

26 82. At all relevant times herein set forth, California Labor Code section 512(a)
27 provides that an employer may not require, cause, or permit an employee to work for a period
28 of more than five (5) hours per day without providing the employee with a meal period of not

1 less than thirty (30) minutes, except that if the total work period per day of the employee is
2 not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee. Under California law, first meal periods must start after no more
4 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

5 83. At all relevant times herein set forth, California Labor Code sections 226.7,
6 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
7 meal period mandated by an applicable order of the IWC.

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

14 85. During the relevant time period, as stated, Defendants had, and continue to
15 have, a company-wide policy and/or practice of understaffing locations due to labor budgeting
16 and/or limited payroll allocation, which, combined with the assignment of heavy workloads
17 and failure to adhere to a schedule for meal periods, resulted in a lack of meal period coverage
18 and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods
19 to which they were entitled. For example, Plaintiff missed most of her meal periods entirely
20 because there were an inadequate number of employees to take over her job duties while she
21 took her meal periods. Thus, Plaintiff and class members had to work through all or part of
22 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
23 time before taking meal periods.

24 86. Further, because Defendants frowned upon employees accruing meal period
25 penalties, Defendants' management pressured employees to clock out for meal periods to
26 reflect compliant meal periods and/or adjusted employee time records, sometimes clocking
27 them out for meal periods of up to 45 minutes, regardless of whether they had received a
28 compliant meal period or not, in order to strictly limit the meal penalties that would need to be

1 paid by Defendants. Moreover, because Defendants' timekeeping system shut down and
2 "reset" at 4:00 a.m. every day, as stated above, Defendants' timekeeping system did not keep
3 track of missed meal periods while it was shut down and/or "resetting."

4 87. In addition, Defendants did not provide Plaintiff and class members with
5 second 30-minute meal periods on days that they worked in excess of 10 hours in one day.
6 For example, during the relevant time period, Plaintiff often worked shifts in excess of 10
7 hours in one day and never took a second meal period. Plaintiff and class members did not
8 sign valid meal period waivers on days that they were entitled to meal periods and were not
9 relieved of all duties.

10 88. At all times mentioned herein, Defendants knew or should have known that as a
11 result of their policies, Plaintiff and class members were prevented from being relieved of all
12 duties and required to perform some of their assigned duties during meal periods. Defendants
13 further knew or should have known that they did not pay Plaintiff and class members all meal
14 period premiums when meal periods were late, interrupted, shortened, and/or missed.

15 89. Furthermore, Defendants engaged in a company-wide practice and/or policy of
16 not paying all meal period premiums owed when compliant meal periods are not provided.
17 Because of this practice and/or policy, Plaintiff and class members have not received premium
18 pay for all missed, late, and interrupted meal periods. As a result, Defendants failed to
19 provide Plaintiff and class members compliant meal periods in violation of California Labor
20 Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

21 90. Defendants' conduct violates the applicable IWC Wage Order, and California
22 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
23 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
24 rate of compensation for each work day that the meal period was not provided.

25 **FOURTH CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 27 **(Against all Defendants)**

28 91. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 92. At all relevant times herein set forth, the applicable IWC Wage Order and
3 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
4 members' employment by Defendants.

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

11 94. At all relevant times, California Labor Code section 226.7 provides that no
12 employer shall require an employee to work during any rest period mandated by an applicable
13 order of the California IWC. To comply with its obligation to authorize and permit rest
14 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
15 employer must "relinquish any control over how employees spend their break time, and
16 relieve their employees of all duties—including the obligation that an employee remain on
17 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
18 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
19 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
20 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
21 required rest period was not authorized and permitted.

22 95. During the relevant time period, Defendants regularly failed to authorize and
23 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
24 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
25 use of labor budgeting, understaffing, and the assignment of heavy workloads prevented
26 Plaintiff and class members from being relieved of all duty in order to take their rest periods.
27 Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to
28 provide adequate rest period coverage, further led to Plaintiff and class members not being

1 authorized and permitted to take compliant rest periods.

2 96. Moreover, on information and belief, Defendants maintained a company-wide
3 on-premises rest period policy, which effectively required that Plaintiff and class members
4 remain on Defendants' premises during their rest periods. Because Plaintiff and class
5 members were restricted from leaving the premises during rest periods, they were denied the
6 ability to use their rest periods freely for their own purposes, such as running personal errands.
7 Thus, Defendants effectively maintained control over Plaintiff and class members during rest
8 periods.

9 97. As a result of Defendants' practices and policies, Plaintiff and class members
10 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
11 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
12 Plaintiff had to forego all of her rest periods due to a lack of rest period coverage.

13 98. Defendants have also engaged in a systematic, company-wide practice and/or
14 policy of not paying rest period premiums owed when rest periods are not authorized and
15 permitted. Because of this practice and/or policy, Plaintiff and class members have not
16 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
17 class members rest periods and failed to pay them rest period premiums due, in violation of
18 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

19 99. Defendants' conduct violates the applicable IWC Wage Order and California
20 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
21 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
22 compensation for each work day that a compliant rest period was not authorized and
23 permitted.

24 **FIFTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 26 **Statements and Failure to Maintain Accurate Payroll Records** 27 **(Against all Defendants)**

28 100. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

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

7 102. At all relevant times, Defendants have knowingly and intentionally provided
8 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
9 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
10 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
11 applicable hourly rates in effect during the pay period, including rates of pay for overtime
12 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
13 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

14 103. Because Defendants did not record the time Plaintiff and Subclass members
15 spent working off the clock and deducted time from their records for meal periods that were
16 interrupted and/or missed (and therefore time for which they should have been paid),
17 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
18 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
19 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
20 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
21 rates of pay in effect during the pay period and the corresponding accurate number of hours
22 worked at each hourly rate, in violation of section 226(a)(9).

23 104. The wage statement deficiencies also include, among other things, failing to list
24 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
25 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
26 for which employees were paid; failing to list the name of the employee and only the last four
27 digits of his or her social security number or an employee identification number other than a
28 social security number; failing to list the name and address of the legal entity that is the

1 employer; and/or failing to state all hours worked as a result of not recording or stating hours
2 worked off-the-clock.

3 105. California Labor Code section 1174(d) provides that “[e]very person employing
4 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
5 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
6 plants or establishments at which employees are employed, payroll records showing the hours
7 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
8 applicable piece rate paid to, employees employed at the respective plants or
9 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
10 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
11 members showing the daily hours they worked and the wages paid thereto as a result of failing
12 to record the off-the-clock hours that they worked.

13 106. California Labor Code section 1198 provides that the maximum hours of work
14 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
15 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
16 employment of any employees for longer hours than those fixed by the order or under
17 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
18 Wage Order, employers are required to keep accurate time records showing when the
19 employee begins and ends each work period and meal period. During the relevant time
20 period, Defendants engaged in company-wide practices and/or policies of failing to record
21 actual hours worked (including falsifying time records by recording that compliant meal
22 periods were taken regardless of if or when meal periods were actually taken), and thereby
23 failed to keep accurate records of work period and meal period start and end times for Plaintiff
24 and Subclass members, in violation of section 1198. Furthermore, in light of Defendants’
25 failure to provide Plaintiff and Subclass members with second 30-minute meal periods to
26 which they were entitled, Defendants kept no records of meal start and end times for second
27 meal periods.

28 107. Plaintiff and Subclass members are entitled to recover from Defendants the

greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

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

109. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

110. At all times relevant herein set forth, 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.

111. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

112. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201

1 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
2 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
3 thirty (30) day maximum pursuant to California Labor Code section 203.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 6 **Employment** 7 **(Against all Defendants)**

8 113. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 114. This cause of action is dependent upon, and wholly derivative of, the overtime
11 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
12 Plaintiff and class members during their employment.

13 115. At all times relevant herein set forth, Labor Code section 204 provides that all
14 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
15 days, inclusive, of any calendar month, other than those wages due upon termination of an
16 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
17 the month during which the labor was performed.

18 116. At all times relevant herein, Labor Code section 204 provides that all wages
19 earned by any person in any employment between the sixteenth (16th) and the last day,
20 inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
22 month.

23 117. At all times relevant herein, Labor Code section 204 provides that all wages
24 earned for labor in excess of the normal work period shall be paid no later than the payday for
25 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
26 204 provides that the requirements of this section are deemed satisfied by the payment of
27 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
28 seven (7) calendar days following the close of the payroll period.

118. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

119. Defendants' failure to timely pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

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

121. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

122. First, during the relevant time period, Defendants, on a company-wide basis, required Plaintiff and class members to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to fully

1 reimburse them for the costs of their work-related mobile device expenses. For example,
2 Defendants' management contacted Plaintiff on her personal cellular phone regarding work-
3 related matters, such as to ask her to contact other employees and to discuss coverage issues.
4 Although Defendants required Plaintiff and class members to use their personal mobile
5 devices and/or mobile data to carry out their work-related duties, Defendants failed to fully
6 reimburse them for their costs incurred.

7 123. Second, during the relevant time period, Defendants had a company-wide
8 policy of requiring Plaintiff and class members to utilize their own personal vehicles to carry
9 out company business, but, on information and belief, failed to fully reimburse them for all
10 costs of travel, including mileage. For example, on about 11 total instances, Plaintiff was
11 required to drive to Defendants' Jack in the Box locations approximately 15 miles away in
12 Kerman, California (14761 W. Whitesbridge Ave.) and approximately two (2) miles away in
13 Fresno, California (3058 W. Clinton Ave.) to pick up ingredients for her restaurant location.
14 As a further example, on about two (2) instances, Plaintiff was required to drive 50-60 miles
15 to Merced, California to attend trainings. Although Defendants required Plaintiff and class
16 members to utilize their own vehicles to carry out their work-related responsibilities,
17 Defendants did not, on information and belief, fully reimburse them for all their travel
18 expenses.

19 124. Third, during the relevant time period, Defendants had a company-wide policy
20 of requiring Plaintiff and class members to wear uniforms bearing the Jack in the Box
21 company name and logo, including uniform shirts and hats. However, Defendants did not
22 provide their employees with sufficient uniforms to wear for their shifts throughout the week.
23 For example, Defendants required Plaintiff and class members to wear uniform shirts
24 displaying the current restaurant promotions but only provided them with two (2) such
25 uniform shirts per promotion. Because Defendants failed to provide Plaintiff and class
26 members with an adequate number of uniform shirts in relation to their scheduled shifts and
27 for the tasks they were required to perform, Plaintiff and class members had to wash their
28 uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For

1 example, due to the nature of restaurant work, Plaintiff's uniform items would become stained
2 with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix
3 these clothes in with other laundry. As a result, Plaintiff had to wash her uniform items
4 separately from her regular clothing, thus incurring additional laundry expenses for the upkeep
5 of her uniforms. Thus, Defendants failed to maintain uniforms they required Plaintiff and
6 class members to wear during their shifts and forced them to incur the cost of maintaining
7 employee uniforms.

8 125. Defendants could have provided Plaintiff and class members with the actual
9 equipment for use on the job, such as company mobile devices, company vehicles, as well as
10 an adequate number of uniform items and/or access to laundering services. Or, Defendants
11 could have reimbursed employees for their mobile device usage, travel expenses, mileage, and
12 laundering expenses or provided a uniform maintenance allowance. Instead, Defendants
13 passed these operating costs off onto Plaintiff and class members. At all relevant times,
14 Plaintiff did not earn at least two (2) times the minimum wage.

15 126. Defendants' company-wide policy and/or practice of passing on their operating
16 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
17 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
18 business-related expenses and costs.

19 127. Plaintiff and class members are entitled to recover from Defendants their
20 business-related expenses incurred during the course and scope of their employment, plus
21 interest.

22 **NINTH CAUSE OF ACTION**

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

24 **(Against all Defendants)**

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

27 129. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
2 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section
3 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
4 violations of those Labor Code sections not found in section 2699.5, including sections 246,
5 516, 1182.12, and 2810.5.

6 130. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code, including, but not limited to, the following:

- 8 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
9 Wage Order for Defendants' failure to compensate Plaintiff and other
10 aggrieved employees with all required overtime pay, as alleged herein;
- 11 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to include all forms
13 of remuneration in the regular rate of pay as required by law for
14 purposes of paying overtime wages and/or meal and rest period
15 premiums to other aggrieved employees, as set forth below;
- 16 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
17 1198, and the applicable IWC Wage Order for Defendants' failure to
18 compensate Plaintiff and other aggrieved employees with at least
19 minimum wages for all hours worked, as alleged herein;
- 20 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
21 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
22 and other aggrieved employees with meal periods, as alleged herein;
- 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 aggrieved employees to take rest periods, as
26 alleged herein;
- 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

1 statements to Plaintiff and other aggrieved employees, as alleged herein
2 and set forth below;

- 3 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
4 IWC Wage Order for failure to maintain payroll records, as alleged
5 herein;
- 6 (h) Violation of Labor Code sections 201 and 202 for failure to pay all
7 earned wages upon termination, as alleged herein;
- 8 (i) Violation of Labor Code section 204 for failure to pay all earned wages
9 during employment, as alleged herein;
- 10 (j) Violation of Labor Code section 246 for failure to properly calculate the
11 sick leave paid to other aggrieved employees, as set forth below;
- 12 (k) Violation of Labor Code sections 551 and 552 for failure to provide one
13 day's rest in seven to Plaintiff and other aggrieved employees, as set
14 forth below;
- 15 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
16 Order for failure to pay split-shift premiums when Plaintiff and other
17 aggrieved employees returned to work for an additional shift in the same
18 day, after having been clocked out for more than an hour, as set forth
19 below;
- 20 (m) Violation of Labor Code section 1198 and the applicable IWC Wage
21 Order for failure to pay reporting time pay when other aggrieved
22 employees were put to work for less than half of their usual or
23 scheduled shifts, as set forth below;
- 24 (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
25 and other aggrieved employees for all business expenses necessarily
26 incurred, as alleged herein; and
- 27 (o) Violation of Labor Code section 2810.5 for failure to provide notice of
28 material terms of employment, as set forth below.

1 131. As stated, Defendants failed to pay Plaintiff and other aggrieved employees
2 overtime wages for all of the overtime hours they actually worked. Furthermore, Defendants
3 did not pay other aggrieved employees the correct overtime rate for the recorded overtime
4 hours that they generated. In addition to an hourly wage, Defendants paid other aggrieved
5 employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
6 However, in violation of the California Labor Code, Defendants failed to incorporate all
7 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
8 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
9 overtime wage rate. Therefore, during times when other aggrieved employees worked
10 overtime and received these other forms of pay, Defendants failed to pay all overtime wages
11 by paying a lower overtime rate than required.

12 132. Defendants' failure to properly calculate the rates of pay for overtime wages
13 based on all remuneration paid is in violation of California Labor Code sections 510 and 1198,
14 and the applicable IWC Wage Order.

15 133. As stated, during the relevant time period, Defendants engaged in a company-
16 wide practice and/or policy of not paying all meal period premiums owed when compliant
17 meal periods are not provided. Because of this practice and/or policy, Plaintiff and other
18 aggrieved employees have not received premium pay for missed, late, and interrupted meal
19 periods. Alternatively, to the extent that Defendants did pay other aggrieved employees for
20 missed, late, and interrupted meal periods, Defendants did not pay other aggrieved employees
21 at the correct rate of pay for premiums because Defendants systematically failed to include all
22 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
23 of remuneration, in the regular rate of pay.

24 134. Defendants' failure to properly calculate the rates of pay for meal period
25 premiums based on all remuneration paid is in violation of California Labor Code sections
26 226.7 and 1198, and the applicable IWC Wage Order.

27 135. As stated, as with meal periods, Defendants also have engaged in a company-
28 wide practice and/or policy of not paying all rest period premiums owed when compliant rest

1 periods are not authorized or permitted. Because of this practice and/or policy, Plaintiff and
2 other aggrieved employees have not received premium pay for all missed rest periods.
3 Alternatively, to the extent that Defendants did pay other aggrieved employees one (1)
4 additional hour of premium pay for missed rest periods, Defendants did not pay other
5 aggrieved employees at the correct rate of pay for premiums because Defendants failed to
6 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
7 other forms of remuneration, in the regular rate of pay.

8 136. Defendants' failure to properly calculate the rates of pay for rest period
9 premiums based on all remuneration paid is in violation of California Labor Code sections
10 226.7 and 1198, and the applicable IWC Wage Order.

11 137. During the relevant time period, because Defendants did not calculate other
12 aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages,
13 meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct
14 amount of gross wages earned by other aggrieved employees in compliance with section
15 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved
16 employees in violation of section 226(a)(5). Defendants also failed to correctly list all
17 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
18 overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section
19 226(a)(9). Defendants' conduct is in violation of California Labor Code sections 226(a) and
20 1198.

21 138. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
22 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
23 days from the commencement of employment with paid sick days, to be accrued at least one
24 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
25 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
26 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
27 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
28 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in

1 the same manner as the regular rate of pay for the workweek in which the employee uses paid
2 sick time, whether or not the employee actually works overtime in that workweek[;]” or 2)
3 “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s
4 total wages, not including overtime premium pay, by the employee’s total hours worked in the
5 full pay periods of the prior 90 days of employment.”

6 139. During the relevant time period, Defendants did not pay other aggrieved
7 employees the correct sick leave rates of pay. In addition to an hourly wage, Defendants paid
8 other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration. However, in violation of the California Labor Code, Defendants failed to
10 incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other
11 forms of remuneration, into the calculation of the regular rate of pay for purposes of
12 calculating the sick leave pay rate. Therefore, during times when other aggrieved employees
13 took sick leave and received these other forms of pay, Defendants failed to pay all sick leave
14 benefits by paying a lower sick leave rate than required. Specifically, Defendants paid other
15 aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate
16 of pay.

17 140. Defendants’ failure to properly calculate the sick leave rates of pay based on all
18 remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved
19 employees on a company-wide basis, in violation of Labor Code section 246(l).

20 141. At all relevant times herein, California Labor Code section 551 provides that
21 every person employed in any occupation of labor is entitled to one day’s rest in seven.
22 Additionally, Labor Code section 552 prohibits employers from requiring employees to work
23 more than six consecutive days without a day of rest. Further, Labor Code section 556
24 exempts an employer from the day-of-rest requirement when the total hours worked by an
25 employee do not exceed 30 hours in any week or six hours in any one day thereof.

26 142. During the relevant time period, on information and belief, Defendants
27 scheduled Plaintiff and other aggrieved employees to work six (6) or more hours per day and
28 seven (7) consecutive days in a workweek. Because Plaintiff and other aggrieved employees

1 worked over 30 hours per week and over six (6) hours per day in any one day in a workweek,
2 they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and other
3 aggrieved employees may have signed purported waivers of their right to a day's rest in seven,
4 such waivers are invalid. Thus, Defendants willfully caused Plaintiff and other aggrieved
5 employees to work more than six days in seven, in violation of Labor Code sections 551 and
6 552.

7 143. At all relevant times, California Labor Code section 1198 dictates that no
8 employer may employ an employee under conditions of labor that are prohibited by the
9 applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . .
10 the standard conditions of labor fixed by the commission shall be the . . . standard conditions
11 of labor for employees. The employment of any employee . . . under conditions of labor
12 prohibited by the order is unlawful.”

13 144. California Code of Regulations, Title 8, section 11050(4)(C) provides that,
14 “When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
15 in addition to the minimum wage for that workday, except when the employee resides at the
16 place of employment.” Plaintiff and other aggrieved employees did not reside at Defendants'
17 locations. California Code of Regulations, Title 8, defines a split shift as “a work schedule,
18 which is interrupted by non-paid non-working periods established by the employer, other than
19 bona fide rest or meal periods.”

20 145. Defendants violated California Labor Code section 1198 and California Code
21 of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff and
22 other aggrieved employees a split-shift premium when they returned to work for an additional
23 shift in the same day, after having been clocked out for at least an hour. For instance, Plaintiff
24 would be scheduled to work a 4-8 hour shift, clock out for at least an hour, and then return to
25 work later in the day for an additional shift. When this occurred, Defendants did not always
26 pay Plaintiff and other aggrieved employees an additional hour at minimum wage.

27 146. Accordingly, Defendants required Plaintiff and other aggrieved employees to
28 work split shifts but failed to pay them the split-shift premium wage in violation of California

1 Labor Code section 1198. Defendants' failure to compensate Plaintiff and other aggrieved
2 employees with split-shift pay when they returned to work for an additional shift in the same
3 day, after having been clocked out for more than an hour, violates California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11050(4)(C).

5 147. California Code of Regulations, Title 8, section 11050(5)(A) provides that
6 "[e]ach workday an employee is required to report for work and does report, but is not put to
7 work or is furnished less than half said employee's usual or scheduled day's work, the
8 employee shall be paid for half the usual or scheduled day's work, but in no event for less
9 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
10 shall not be less than the minimum wage." The "primary purpose of the reporting time
11 regulation" is "to guarantee at least partial compensation for employees who report to work
12 expecting to work a specified number of hours, and who are deprived of that amount because
13 of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch*
14 *Cellular*, 209 Cal. App. 4th 556 (2012).

15 148. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
17 Defendants failed to pay other aggrieved employees reporting time pay when they reported to
18 work for their usual or scheduled shift but were put to work for less than half of the usual or
19 scheduled day's work.

20 149. On information and belief, Defendants had a company-wide practice of sending
21 other aggrieved employees home early from their shifts, including before they had worked at
22 least half of their usual or scheduled shift, but would not pay other aggrieved employees for
23 half of their usual or scheduled shift. Although other aggrieved employees would report to
24 work based on the schedule that Defendants provided to them, Defendants would send them
25 home before they had worked at least half of their scheduled shifts without giving them
26 reporting time pay. Accordingly, other aggrieved employees were not properly compensated
27 with reporting time pay in violation of California Labor Code section 1198 and California
28 Code of Regulations, Title 8, section 11050(5)(A).

150. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

151. During the relevant time period, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and other aggrieved employees with the rate of pay for overtime, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff has an empty space where the overtime rate(s) of pay should be. Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5.

152. Thus, Plaintiff and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 248.5, 558, 1174.5, and/or 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

153. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 154. Defendants are “persons” as defined by California Business & Professions
3 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
4 and/or associations.

5 155. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
6 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
7 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
8 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
9 meaning of Code of Civil Procedure section 1021.5.

10 156. Defendants’ activities, as alleged herein, are violations of California law, and
11 constitute unlawful business acts and practices in violation of California Business &
12 Professions Code sections 17200, *et seq.*

13 157. A violation of California Business & Professions Code sections 17200, *et seq.*
14 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
15 policies and practices have violated state law in at least the following respects:

- 16 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
17 class members, to work overtime without paying them proper
18 compensation in violation of California Labor Code sections 510 and
19 1198, and the applicable IWC Wage Order, as alleged herein;
- 20 (b) Failing to pay at least minimum wage to Plaintiff and class members in
21 violation of California Labor Code sections 1182.12, 1194, 1197,
22 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
23 herein;
- 24 (c) Failing to provide all meal periods to Plaintiff and class members in
25 violation of California Labor Code sections 226.7, 512(a), 516, and
26 1198, and the applicable IWC Wage Order, as alleged herein;
- 27 (d) Failing to authorize and permit Plaintiff and class members to take all
28 rest periods in violation of California Labor Code sections 226.7, 516,

- 1 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 2 (e) Failing to provide Plaintiff and class members with accurate wage
- 3 statements and failing to maintain accurate payroll records in violation
- 4 of California Labor Code sections 226(a), 1174(d), and 1198, and the
- 5 applicable IWC Wage Order, as alleged herein;
- 6 (f) Failing to timely pay all earned wages to Plaintiff and class members in
- 7 violation of California Labor Code section 204, as alleged herein;
- 8 (g) Failing to provide one day's rest in seven to Plaintiff and class members
- 9 in violation of California Labor Code sections 551 and 552, as set forth
- 10 below;
- 11 (h) Failing to pay Plaintiff and class members split-shift premium wage of
- 12 an additional hour of pay at the minimum wage, when they returned to
- 13 work for an additional shift in the same day, after having been clocked
- 14 out form more than an hour, in violation of California Labor Code
- 15 section 1198 and the applicable IWC Wage Order, as set forth below;
- 16 (i) Failing to reimburse Plaintiff and class members for all business
- 17 expenses necessarily incurred in violation of California Labor Code
- 18 section 2802, as alleged herein; and
- 19 (j) Failing to provide written notice of information material to Plaintiff's
- 20 and class members' employment with Defendants in violation of
- 21 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

22 158. At all relevant times herein, California Labor Code section 551 provides that

23 every person employed in any occupation of labor is entitled to one day's rest in seven.

24 Additionally, California Labor Code section 552 prohibits employers from requiring

25 employees to work more than six consecutive days without a day of rest.

26 159. At all relevant times herein set forth, California Labor Code section 556

27 exempts an employer from the day-of-rest requirement when the total hours worked by an

28 employee do not exceed 30 hours in any week or six hours in any one day thereof.

1 160. During the relevant time period, on information and belief, Defendants
2 scheduled Plaintiff and class members to work six (6) or more hours per day and seven (7)
3 consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours
4 per week and over six (6) hours per day in any one day in a workweek, they were not exempt
5 from the day-of-rest requirement. To the extent that Plaintiff and class members may have
6 signed purported waivers of their right to a day's rest in seven, such waivers are invalid.
7 Thus, Defendants willfully caused Plaintiff and class members to work more than six days in
8 seven, in violation of Labor Code sections 551 and 552.

9 161. At all times relevant herein, Labor Code section 1198 provides that no
10 employer may employ an employee under conditions of labor that are prohibited by the
11 applicable IWC Wage Order. California Code of Regulations, Title 8, section 11050(4)(C)
12 provides that, "When an employee works a split shift, one (1) hour's pay at the minimum
13 wage shall be paid in addition to the minimum wage for that workday, except when the
14 employee resides at the place of employment." Plaintiff and class members did not reside at
15 Defendants' locations. California Code of Regulations, Title 8, defines a split shift as "a work
16 schedule, which is interrupted by non-paid non-working periods established by the employer,
17 other than bona fide rest or meal periods."

18 162. Defendants violated California Labor Code section 1198 and California Code
19 of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff and
20 class members a split-shift premium when they returned to work for an additional shift in the
21 same day, after having been clocked out for at least an hour. For instance, Plaintiff would be
22 scheduled to work a 4-8 hour shift, clock out for at least an hour, and then return to work later
23 in the day for an additional shift. When this occurred, Defendants did not always pay Plaintiff
24 and class members an additional hour at minimum wage.

25 163. Accordingly, Defendants required Plaintiff and class members to work split
26 shifts but failed to pay them the split-shift premium wage in violation of California Labor
27 Code section 1198. Defendants' failure to compensate Plaintiff and class members with split-
28 shift pay when they returned to work for an additional shift in the same day, after having been

1 clocked out for more than an hour, violates California Labor Code section 1198 and California
2 Code of Regulations, Title 8, section 11050(4)(C).

3 164. At all relevant times herein, California's Wage Theft Prevention Act was
4 enacted to ensure that employers provide employees with basic information material to their
5 employment relationship at the time of hiring, and to ensure that employees are given written
6 and timely notice of any changes to basic information material to their employment. Codified
7 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
8 time of hiring, an employer must provide written notice to employees containing basic and
9 material payroll information, including, among other things, the rate(s) of pay and basis
10 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
11 including any rates for overtime, the regular payday designated by the employer, and any
12 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
13 Code § 2810.5(a)(1)(A)-(C).

14 165. During the relevant time period, on information and belief, Defendants failed,
15 on a company-wide basis, to provide written notice to Plaintiff and class members that lists all
16 the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically,
17 Defendants failed to provide Plaintiff and class members with the rate of pay for overtime, in
18 violation of section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to
19 Plaintiff has an empty space where the overtime rate(s) of pay should be. Defendants' failure
20 to provide Plaintiff and class members with written notice of basic information regarding their
21 employment with Defendants is in violation of California Labor Code section 2810.5.

22 166. As a result of the violations of California law herein described, Defendants
23 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
24 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
25 herein.

26 167. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
27 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
28 Defendants during a period that commences four years prior to the filing of the initial

1 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
2 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
3 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

4 **ELEVENTH CAUSE OF ACTION**

5 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

6 **Unfair Business Practices**

7 **(Against all Defendants)**

8 168. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 169. Defendants are "persons" as defined by California Business & Professions
11 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
12 and/or associations.

13 170. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
14 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
15 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
16 seeks to enforce important rights affecting the public interest within the meaning of Code of
17 Civil Procedure section 1021.5.

18 171. Defendants' activities, namely Defendants' company-wide practice and/or
19 policy of not paying Plaintiff and class members all meal and rest period premiums due to
20 them under California Labor Code section 226.7, deprived Plaintiff and class members of the
21 compensation guarantee and enhanced enforcement implemented by section 226.7. The
22 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
23 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
24 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
25 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
26 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
27 unfair business practice in violation of California Business & Professions Code sections
28 17200, *et seq.* (*Id.*)

172. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

173. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

Class Certification

2. That this case be certified as a class action;
3. That Plaintiff be appointed as the representative of the Class and Subclass;
4. That counsel for Plaintiff be appointed as class counsel.

As to the First Cause of Action

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

6. For general unpaid wages at overtime wage rates and such general and special

1 damages as may be appropriate;

2 7. For pre-judgment interest on any unpaid overtime compensation commencing
3 from the date such amounts were due, or as otherwise provided by law;

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

6 9. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Second Cause of Action**

9 10. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
11 Order by willfully failing to pay minimum wages to Plaintiff and class members;

12 11. For general unpaid wages and such general and special damages as may be
13 appropriate;

14 12. For pre-judgment interest on any unpaid compensation from the date such
15 amounts were due, or as otherwise provided by law;

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

18 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

19 15. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

22 16. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by
24 willfully failing to provide all meal periods to Plaintiff and class members;

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

28 18. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 19. For premiums pursuant to California Labor Code section 226.7(c);

3 20. For pre-judgment interest on any unpaid meal period premiums from the date
4 such amounts were due, or as otherwise provided by law;

5 21. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 22. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Fourth Cause of Action**

10 23. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully
12 failing to authorize and permit Plaintiff and class members to take all rest periods;

13 24. That the Court make an award to the Plaintiff and class members of one (1) hour
14 of pay at each employee's regular rate of pay for each workday that a rest period was not
15 authorized and permitted;

16 25. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 26. For premiums pursuant to California Labor Code section 226.7(c);

19 27. For pre-judgment interest on any unpaid rest period premiums from the date
20 such amounts were due, or as otherwise provided by law;

21 28. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 29. For such other and further relief as the Court may deem equitable and
24 appropriate.

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

26 30. That the Court declare, adjudge and decree that Defendants violated the
27 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
28 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate

1 itemized wage statements thereto;

2 31. For all actual, consequential, and incidental losses and damages, according to
3 proof;

4 32. For injunctive relief pursuant to California Labor Code section 226(h);

5 33. For statutory penalties pursuant to California Labor Code section 226(e);

6 34. For attorneys' fees and costs pursuant to California Labor Code section
7 226(e)(1); and

8 35. For such other and further relief as the Court may deem equitable and
9 appropriate.

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

11 36. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
13 and/or meal and rest period premiums owed at the time of termination of the employment of
14 Plaintiff and other terminated class members;

15 37. For all actual, consequential and incidental losses and damages, according to
16 proof;

17 38. For waiting time penalties according to proof pursuant to California Labor
18 Code section 203 for all employees who have left Defendants' employ;

19 39. For pre-judgment interest on any unpaid wages from the date such amounts
20 were due, or as otherwise provided by law;

21 40. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 41. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Seventh Cause of Action**

26 42. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
28 overtime wages, minimum wages, and/or meal and rest period premiums during their

1 employment;

2 43. For all actual, consequential and incidental losses and damages, according to
3 proof;

4 44. For statutory penalties according to proof pursuant to California Labor Code
5 section 210;

6 45. For pre-judgment interest on any unpaid wages from the date such amounts
7 were due, or as otherwise provided by law;

8 46. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

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

12 **As to the Eighth Cause of Action**

13 48. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
15 related expenses and costs incurred by Plaintiff and class members;

16 49. For unpaid business-related expenses and such general and special damages as
17 may be appropriate;

18 50. For pre-judgment interest on any unpaid business-related expenses from the
19 date such amounts were due, or as otherwise provided by law;

20 51. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 52. For attorneys' fees and costs pursuant to California Labor Code section
23 2802(c), or as otherwise provided by law; and

24 53. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Ninth Cause of Action**

27 54. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:

1 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
2 to include all forms of remuneration in the regular rate of pay for purposes of paying overtime
3 wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by
4 failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by
5 failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
6 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements
7 and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages
8 upon termination); 204 (by failing to timely pay all earned wages during employment); 246
9 (by failing to properly calculate sick leave pay); 551 and 552 (by failing to provide one day's
10 rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide split-shift pay);
11 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay); 2802 (by
12 failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of
13 information material to employment);

14 55. For civil penalties pursuant to the California Labor Code, including sections
15 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor
16 Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d),
17 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

18 56. For attorneys' fees and costs pursuant to California Labor Code section
19 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
20 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d),
21 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

22 57. For pre-judgment and post-judgment interest as provided by law; and

23 58. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Tenth Cause of Action**

26 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
27 to provide Plaintiff and class members all overtime wages due to them, failing to provide
28 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and

1 class members all meal periods, failing to authorize and permit Plaintiff and class members to
2 take all rest periods, failing to provide Plaintiff and class members accurate and complete
3 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
4 failing to timely pay Plaintiff and class members all earned wages during employment, failing
5 to provide one day's rest in seven, failing to properly compensate Plaintiff and class members
6 for split shifts, failing to reimburse Plaintiff and class members for business-related expenses,
7 and failing to provide written notice of material terms of employment, constitutes an unlawful
8 business practice in violation of California Business and Professions Code sections 17200, *et*
9 *seq.*;

10 60. For restitution of unpaid wages to Plaintiff and all class members and
11 prejudgment interest from the day such amounts were due and payable;

12 61. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully acquired by
14 Defendants as a result of violations of California Business & Professions Code sections
15 17200, *et seq.*;

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

18 63. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Eleventh Cause of Action**

21 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
22 Plaintiff and class members the statutory benefits guaranteed under California Labor Code
23 section 226.7 constitutes an unfair business practice in violation of California Business and
24 Professions Code sections 17200, *et seq.*;

25 65. For restitution of the statutory benefits under California Labor Code section
26 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the
27 day such amounts were due and payable;

28 66. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections
3 17200, *et seq.*;

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

6 68. For pre-judgment and post-judgment interest as provided by law; and

7 69. For such other and further relief as the Court may deem equitable and
8 appropriate.

9
10 Dated: December 19, 2023

Respectfully submitted,

11
12 Capstone Law APC

13 By: Roxanna Tabatabaeepour
14 Roxanna Tabatabaeepour
15 Ryan Tish
16 Alexander Wallin

17 Attorneys for Plaintiff Yajaira Ochoa
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Exhibit 1



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Los Angeles, California 90067
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SAIRAH BUDHWANI
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October 5, 2023

VIA ONLINE SUBMISSION

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

Subject: *Yajaira Ochoa v. Fresno Foods, LLC, et al.*

Dear PAGA Administrator:

This office represents Yajaira Ochoa in connection with her claims under the California Labor Code. Ms. Ochoa was an employee of FRESNO FOODS, LLC; NEWCO FOODS, INC.; and/or YOSI FOODS LLC. For the purpose of this letter, Ms. Ochoa collectively refers to these entities as "FRESNO FOODS".

The employers may be contacted directly at the addresses below:

FRESNO FOODS, LLC
4917 GENESTA AVE
ENCINO, CA 91316

NEWCO FOODS, INC.
4917 GENESTA AVE
ENCINO, CA 91316

YOSI FOODS LLC
4917 GENESTA AVE
ENCINO, CA 91316

Ms. Ochoa 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. Ochoa seeks relief on behalf of herself, the State of California, and other persons who are or were employed by FRESNO FOODS 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.

FRESNO FOODS employed Ms. Ochoa as an hourly paid, non-exempt Team Member and Team Leader from approximately June 2021 to June 2023. During her employment, Ms. Ochoa typically worked eight (8) hours or more per day, and five (5) days or more per week. At the time Ms. Ochoa's employment with FRESNO FOODS ended, she earned approximately \$16.50 per hour. Her

job duties included, without limitation, preparing ingredients, taking orders, cooking food, balancing cash drawers and the restaurant safe, cleaning, and re-stocking inventory.

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

FRESNO FOODS’s Company-Wide and Uniform Payroll and HR Practices

FRESNO FOODS, LLC and YOSI FOODS LLC are California limited liability companies, and NEWCO FOODS, INC. is a California corporation. Together, they own and operate approximately 28 Jack in the Box franchise restaurant locations in California. Upon information and belief, FRESNO FOODS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Encino, California, for all non-exempt, hourly paid employees working for FRESNO FOODS in California, including Ms. Ochoa and other aggrieved employees. At all relevant times, FRESNO FOODS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Ochoa and other aggrieved employees, regardless of their location or position.

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

¹ These facts, theories, and claims are based on Ms. Ochoa’s experience and counsel’s review of those records currently available relating to Ms. Ochoa’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. Ochoa 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.

FRESNO FOODS willfully failed to pay all overtime wages owed to Ms. Ochoa and other aggrieved employees. During the relevant time period, Ms. Ochoa 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 (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, FRESNO FOODS had, and continues to have, a policy and/or practice of discouraging and impeding Ms. Ochoa 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 FRESNO FOODS's use of labor budgets and assignment of heavy workloads (*see infra*), led Ms. Ochoa and other aggrieved employees to work off-the-clock before and after their scheduled shift times, and on their days off. For example, when Ms. Ochoa arrived for her shifts, FRESNO FOODS's management often required her to start working immediately, for up to 30 minutes, before she was able to clock in because management wanted certain tasks, such as counting cash, to be done at the beginning of shifts. In addition, FRESNO FOODS's management often clocked out Ms. Ochoa at her scheduled shift end-time and required her to continue attending to customers and completing other work duties for up to 30 minutes to help the next shift. Ms. Ochoa was told she could not stay clocked-in because overtime hours were limited by the labor budget. As a further example, FRESNO FOODS's managers often called Ms. Ochoa on her personal cellular phone regarding work-related matters, such as to ask her to contact other employees and to discuss coverage issues, on her days off and before and after her shifts. Additionally, about once per month for approximately two (2) hours per instance, Ms. Ochoa was required to complete online courses and/or trainings on new menu items, upgraded machinery, and updated procedures on her days off. This off-the-clock work could have been recorded by FRESNO FOODS, but it refused to do so to avoid payment of additional wages to Ms. Ochoa and other aggrieved employees. Thus, FRESNO FOODS failed to track all of the time that employees spent performing work-related tasks outside of their scheduled shifts, and Ms. Ochoa and other aggrieved employees received no compensation for this time.

Second, FRESNO FOODS utilized, and continues to utilize, a uniform timekeeping system that shut down and locked out employees during a 5-10 minute "reset" at 4:00 a.m. each day. If Ms. Ochoa's and other aggrieved employees' shifts were scheduled to end during the "reset," FRESNO FOODS's management required them to clock out up to 10 minutes prior to the "reset" of the point-of-sale ("POS") machines that Ms. Ochoa and other aggrieved employees used to clock in and clock out. As a result, Ms. Ochoa and other aggrieved employees were forced to clock out and continue working while off-the-clock until the end of their scheduled shifts or when they were released by management. For example, when Ms. Ochoa was scheduled to work an overnight shift, management required her to clock out at around 3:50 a.m. and continue working until the end of her shift at 4:00 a.m. or, as stated above, until she was permitted to leave by management, time for which she was not paid. Additionally, on information and belief, FRESNO FOODS's timekeeping system did not keep track of missed meal periods while it was shut down and/or "resetting." Consequently, FRESNO FOODS did not record all hours worked (including during meal periods) and Ms. Ochoa and other aggrieved employees performed work for which they were not paid.

Moreover, because FRESNO FOODS's timekeeping system was integrated with the company's POS system and only two (2) monitors were available for clocking in and out, Ms. Ochoa and other aggrieved employees would sometimes have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions and/or clocking in or out. For instance, Ms. Ochoa was required to wait several minutes off-the-clock and under FRESNO

FOODS's control until a POS monitor was available for clocking-in. Thus, Ms. Ochoa and other aggrieved employees performed work that was not recorded, time for which they were not paid.

Third, as stated, FRESNO FOODS had, and continues to have, company-wide policies and/or practices of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this insufficient meal period coverage, Ms. Ochoa and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. FRESNO FOODS also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Ochoa and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Ochoa worked through most of her meal periods entirely because there was an inadequate number of employees to take over her job duties while she took her meal periods. FRESNO FOODS did not compensate Ms. Ochoa and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fourth, because FRESNO FOODS frowned upon employees accruing meal period penalties, FRESNO FOODS's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to limit the meal penalties that FRESNO FOODS would otherwise owe. In addition, FRESNO FOODS sometimes pressured Ms. Ochoa and other aggrieved employees to clock out for a 45-minute meal period or adjusted employee time records to reflect 45-minute meal periods, and required them to continue working during that time. Thus, FRESNO FOODS did not record all hours worked during meal periods, and Ms. Ochoa and other aggrieved employees performed work during meal periods for which they were not paid.

FRESNO FOODS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Ochoa and other aggrieved employees were performing their 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. Ochoa 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. Ochoa and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

FRESNO FOODS's failure to pay Ms. Ochoa 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. Ochoa 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. 5-2001 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, § 11050(2)(K) (defining "Hours Worked").

As set forth above, as a result of FRESNO FOODS's policy of limiting the amount of overtime employees could accrue, FRESNO FOODS required Ms. Ochoa and other aggrieved employees to perform work off-the-clock before and after their scheduled shift start- and end-times and on their days off to complete their tasks, such as counting the cash drawer, attending to customers, responding to phone calls from FRESNO FOODS's management about work-related matters, and completing online courses and/or trainings. Moreover, as set forth above, FRESNO FOODS utilized a timekeeping system that automatically locked out employees working overnight shifts during a "reset" at 4:00 a.m., for which FRESNO FOODS's management required Ms. Ochoa and other aggrieved employees to clock out before their scheduled shift end-time and continue working off-the-clock while the system was resetting. Furthermore, as stated, because FRESNO FOODS's timekeeping system was integrated with the company's POS system, Ms. Ochoa and other aggrieved employees sometimes had to wait to clock in for the start of their shifts when other employees were using the POS system to handle customer transactions or were clocking in or out themselves. Because FRESNO FOODS failed to track this time Ms. Ochoa and other aggrieved employees spent working off-the-clock, Ms. Ochoa and other aggrieved employees received no compensation for this time.

Further, as set forth above, due to FRESNO FOODS's policies and/or practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to adhere to a schedule for meal periods, and/or subsequent lack of meal coverage, Ms. Ochoa 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 limit meal penalties that FRESNO FOODS would otherwise owe, FRESNO FOODS pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, sometimes for up to 45 minutes, time for which they were not paid. Thus, FRESNO FOODS systematically failed to pay Ms. Ochoa and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, FRESNO FOODS did not pay at least minimum wages for all hours worked by Ms. Ochoa and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, FRESNO FOODS 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, FRESNO FOODS regularly failed to pay at least minimum wages to Ms. Ochoa 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. Ochoa 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 set forth above, FRESNO FOODS had, and continues to have, company-wide policies and/or practices of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to adhere to a schedule for meal periods, resulted in a lack of adequate meal period coverage and prevented Ms. Ochoa and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Ochoa and other aggrieved employees had to work through their 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, Ms. Ochoa missed most of her meal periods entirely because there was an inadequate number of employees to take over her job duties while she took her meal periods.

Further, as stated above, because FRESNO FOODS frowned upon employees accruing meal period penalties, FRESNO FOODS's management pressured Ms. Ochoa and other aggrieved employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, sometimes clocking them out for meal periods of up to 45 minutes, regardless of whether they had received a compliant meal period, in order to limit meal penalties that would need to be paid by FRESNO FOODS. Moreover, because FRESNO FOODS's timekeeping system shut down and "reset" at 4:00 a.m. every day, as stated above, FRESNO FOODS's timekeeping system did not keep track of missed meal periods while it was shut down and/or "resetting."

In addition, FRESNO FOODS did not provide Ms. Ochoa and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Ms. Ochoa often worked shifts in excess of 10 hours in one day and never took a second meal period. Ms. Ochoa 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, FRESNO FOODS knew or should have known that as a result of its policies, Ms. Ochoa and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. FRESNO FOODS further knew or should have known that it did not pay Ms. Ochoa and other aggrieved employees meal period premiums when meal periods were late, missed, shortened, and/or interrupted.

In addition, FRESNO FOODS 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. Ochoa and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that FRESNO FOODS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, FRESNO FOODS did not pay other aggrieved employees at the correct rate of pay for premiums because FRESNO FOODS 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, FRESNO FOODS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Ochoa 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 §§ 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, FRESNO FOODS regularly failed to authorize and permit Ms. Ochoa 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, FRESNO FOODS's company-wide practices, including labor budgeting, understaffing, and assigning heavy workloads, prevented Ms. Ochoa and other aggrieved employees from being relieved of all duty to take rest periods. FRESNO FOODS also failed to schedule rest periods, which, coupled with FRESNO FOODS's failure to provide adequate rest period coverage, further led to Ms. Ochoa and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, on information and belief, FRESNO FOODS maintained a company-wide on-premises rest period policy, which effectively required that Ms. Ochoa and other aggrieved employees remain on FRESNO FOODS's premises during their rest periods. Because Ms. Ochoa 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, FRESNO FOODS effectively maintained control over Ms. Ochoa and other aggrieved employees during rest periods.

As a result of FRESNO FOODS's practices and policies, Ms. Ochoa 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. Ochoa had to forego all of her rest periods due to a lack of rest period coverage.

FRESNO FOODS 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. Ochoa and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that FRESNO FOODS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, FRESNO FOODS did not pay other aggrieved employees at the correct rate of pay for premiums because FRESNO FOODS 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, FRESNO FOODS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Ochoa 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 §§ 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. 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, FRESNO FOODS has knowingly and intentionally provided Ms. Ochoa and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FRESNO FOODS issued uniform wage statements to Ms. Ochoa 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, FRESNO FOODS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because FRESNO FOODS did not record the time Ms. Ochoa and other 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), FRESNO FOODS did not list the correct amount of gross wages and net wages earned by Ms. Ochoa and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, FRESNO FOODS failed to accurately list the total number of hours worked by Ms. Ochoa 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).

Additionally, because FRESNO FOODS 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, FRESNO FOODS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, FRESNO FOODS also failed to list the correct amount of net wages in violation of section 226(a)(5). FRESNO FOODS 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), FRESNO FOODS willfully failed to maintain accurate payroll records for Ms. Ochoa 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, FRESNO FOODS 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 of 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.

Ochoa and other aggrieved employees in violation of section 1198. Furthermore, in light of FRESNO FOODS's failure to provide Ms. Ochoa and other aggrieved employees with second 30-minute meal periods to which they were entitled, FRESNO FOODS kept no records of meal start and end times for second meal periods.

Because FRESNO FOODS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Ochoa 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. Ochoa 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. Ochoa 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, FRESNO FOODS failed to pay Ms. Ochoa and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Ochoa 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.

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

Ms. Ochoa 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 – 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."

During the relevant time period, on information and belief, FRESNO FOODS did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, FRESNO FOODS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, FRESNO FOODS 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 sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, FRESNO FOODS failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, FRESNO FOODS paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

FRESNO FOODS'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 section 246(l). 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 §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, on information and belief, FRESNO FOODS scheduled Ms. Ochoa and other aggrieved employees to work six (6) or more hours per day and seven (7) consecutive days in a workweek. Because Ms. Ochoa and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Ochoa and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, FRESNO FOODS caused Ms. Ochoa and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Ochoa 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 § 1198 and California Code of Regulations Title 8, Section 11050 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 11050(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, FRESNO FOODS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because FRESNO FOODS failed to pay 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 regularly scheduled day's work.

On information and belief, FRESNO FOODS had a company-wide practice of sending 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 other aggrieved employees for half of their usual or scheduled shift. Although other aggrieved employees would report to work based on the schedule that FRESNO FOODS provided to them, FRESNO FOODS would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, 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 11050(5)(A). 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 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides 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 11050(4)(C) provides that, “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.” California Code of Regulations, Title 8, defines a split shift as “a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

FRESNO FOODS willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because FRESNO FOODS failed to pay Ms. Ochoa and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than four (4) hours. For example, Ms. Ochoa would be scheduled to work a 4-8 hour shift, clock out for at least an hour, and then return to work later in the day for an additional shift. When this occurred, FRESNO FOODS did not always pay Ms. Ochoa and other aggrieved employees an additional hour at minimum wage. Accordingly, FRESNO FOODS required Ms. Ochoa and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

FRESNO FOODS’s failure to provide Ms. Ochoa and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Ms. Ochoa 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 § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, FRESNO FOODS had a company-wide policy of requiring Ms. Ochoa and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but FRESNO FOODS failed to fully reimburse them for the costs of their work-related mobile device expenses. For example, FRESNO FOODS's management contacted Ms. Ochoa on her personal cellular phone regarding work-related matters, such as to ask her to contact other employees and to discuss coverage issues. Although FRESNO FOODS required Ms. Ochoa and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, FRESNO FOODS failed to reimburse them for their costs incurred.

Second, during the relevant time period, FRESNO FOODS had a company-wide policy of requiring Ms. Ochoa and other aggrieved employees to utilize their own personal vehicles to carry out company business, but, on information and belief, failed to fully reimburse them for all costs of travel, including mileage. For example, on about 11 total instances, Ms. Ochoa was required to drive to FRESNO FOODS's Jack in the Box locations approximately 15 miles away in Kerman, California (14761 W. Whitesbridge Ave.) and approximately two (2) miles away in Fresno, California (3058 W. Clinton Ave.) to pick up ingredients for her restaurant location. As a further example, on about two (2) instances, Ms. Ochoa was required to drive 50-60 miles to Merced, California to attend trainings. Although FRESNO FOODS required Ms. Ochoa and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, FRESNO FOODS did not, on information and belief, fully reimburse them for all their travel expenses.

Third, during the relevant time period, FRESNO FOODS had a company-wide policy of requiring Ms. Ochoa and other aggrieved employees to wear uniforms bearing the Jack in the Box company name and logo, including uniform shirts and hats. However, FRESNO FOODS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, FRESNO FOODS required Ms. Ochoa and other aggrieved employees to wear uniform shirts displaying the current restaurant promotions but only provided them with two (2) such uniform shirts per promotion. Because FRESNO FOODS failed to provide Ms. Ochoa and other aggrieved employees with an adequate number of uniform shirts in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Ochoa and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Ms. Ochoa's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix these clothes in with other laundry. As a result, Ms. Ochoa had to wash her uniform items separately from her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniforms. Thus, FRESNO FOODS failed to maintain uniforms it required Ms. Ochoa and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

FRESNO FOODS could have provided Ms. Ochoa and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, as well as an adequate number of uniform items and/or access to laundering services. Or, FRESNO FOODS could have reimbursed employees for their mobile device usage, travel expenses, mileage, and laundering expenses or provided a uniform maintenance allowance. Instead, FRESNO FOODS passed these operating costs off onto Ms. Ochoa and other aggrieved employees. At all relevant times, Ms. Ochoa did not earn at least two (2) times the minimum wage.

Thus, FRESNO FOODS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Ochoa 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 § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

During the relevant time period, FRESNO FOODS failed to provide Ms. Ochoa and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, FRESNO FOODS failed to provide Ms. Ochoa and other aggrieved employees with the rate of pay for overtime, in violation of section 2810.5(a)(1)(A). Instead, the wage theft form that FRESNO FOODS provided to Ms. Ochoa has an empty space where the overtime rate(s) of pay should be. FRESNO FOODS's failure to provide Ms. Ochoa and other aggrieved employees with written notice of basic information regarding their employment is in violation of California Labor Code section 2810.5.

Ms. Ochoa 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." FRESNO FOODS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Ochoa's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Ochoa 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. Ochoa 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 FRESNO FOODS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: FRESNO FOODS, LLC (via U.S. Certified Mail); NEWCO FOODS, INC. (via U.S. Certified Mail); YOSI FOODS LLC (via U.S. Certified Mail)

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

7022 2410 0000 2264 5362



CERTIFIED MAIL

FRESNO FOODS, LLC
4917 GENESTA AVE
ENCINO, CA 91316

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

FRESNO FOODS, LLC
4917 GENESTA AVE
ENCINO, CA 91316



9590 9402 7706 2122 1503 91

9. Express Mail Return Receipt (from service label)

7022 2410 0000 2264 5362

PS Form 3811, July 2020 PSN 7530-02-000-9003

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 17?
If YES, enter delivery address below: ☐ Yes
☐ No

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

Domestic Return Receipt

7022 2410 0000 2264 5362

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee

Office Use

Filedate (MM/DD)

PSN (Barcode)

PSN (Barcode)

PSN (Barcode)

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PSN (Barcode)

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NEWCO FOODS, INC.
4917 GENESTA AVE
ENCINO, CA 91316



9590 9402 7706 2122 1504 14

Mail
Restricted Delivery
DD

Domestic Return Flows

Service Type	Priority Mail Express®
☐ Adult Signature	☐ Registered Mail™
☐ Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery
☐ Certified Mail®	☐ Signature Confirmation™
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery	
☐ Collect on Delivery Restricted Delivery	

PS Form 3800, April 2015 (with changes through 10/1/15)

www.elsevier.com/locate/jmb

CERTIFIED MAIL

100

YOSI FOODS LLC
4917 GENESTA AVE
ENCINO, CA 91316

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

YOSI FOODS LLC
4917 GENESTA AVE
ENCINO, CA 91316

COMPLETE THIS SECTION ON DELIVERY

A. Signature **X**

B. Received by (Printed Name)

☐ Agent
☐ Addressee
C. Date of Delivery

2. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

100

9590 9402 7706 2122 1504 07

2. *Article Number* (Number from service label)

7022 2410 0000 2264 5348

Type	Priority Mail Express®
Signature Restricted Delivery	☐ Registered Mail™
Insured Restricted Delivery	☐ Registered Mail Restricted Delivery
Delivery Confirmation™	☐ Signature Confirmation™
Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
Registered Delivery	

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

7022 2410 0000 2264 5348

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.sps.com

OFFICIAL USE

ОБЩАЯ ЧАСТЬ

FIVE-FOUR

☐ **Agree** (I agree with the statement)
☐ **Disagree** (I disagree with the statement)
☐ **Neutral** (I am neutral about the statement)

YOSI FOODS LLC
4917 GENESTA AVE
ENCINO, CA 91316

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece,

**YOSI FOODS LLC
4917 GENESTA AVE
ENCINO, CA 91316**



9590 9402 7706 2122 1504 07

2. Article Number (Transfer from service label)

7022 2410 0000 2264 5348

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Leslie Vargay*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Leslie Vargay

C. Date of Delivery

10/10/23

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

Service Type

Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

NEWCO FOODS, INC.
4917 GENESTA AVE
ENCINO, CA 91316



9590 9402 7706 2122 1504 14

Article Number (Transfer from service label)

7022 2410 0000 2264 5355

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Leslie Vargas*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Leslie Vargas

C. Date of Delivery

10/10/25

- D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail Restricted Delivery (00)
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

FRESNO FOODS, LLC
4917 GENESTA AVE
ENCINO, CA 91316



9590 9402 7706 2122 1503 91

Article Number (Transfer from service label)

7022 2410 0000 2264 5362

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Leslie Vargas*

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Leslie Vargas

C. Date of Delivery

10/10/25

- D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail Restricted Delivery (00)
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000,
Los Angeles, California 90067. My electronic address is trevor.beach@capstonelawyers.com.

5 On **December 19, 2023**, I served the document(s) described as:
6 **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION**
7 **UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR**
8 **CODE §§ 2698, ET SEQ.**

9 on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof []
10 to interested parties as follows [or] [✓] as stated on the attached service list:

11 Beth A. Kahn, Esq., SBN 134158 Attorneys for Defendants
12 Matthew Richardson, Esq., SBN 329252 FRESNO FOODS, LLC, NEWCO FOODS,
13 MUSICK, PEELER & GARRETT LLP INC., and YOSI FOODS, LLC,
14 333 South Hope Street, Suite 2900
15 Los Angeles, CA 90071
16 Telephone: (213) 629-7600
17 Facsimile: (213) 624-1376
18 B.Kahn@MusickPeeler.com
19 M.Richardson@MusickPeeler.com

20 [] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the
21 envelope(s) for mailing in the ordinary course of business at Los Angeles, California.
22 I am “readily familiar” with this firm’s practice of collection and processing
23 correspondence for mailing. Under that practice, sealed envelopes are deposited with
24 the U.S. Postal Service that same day in the ordinary course of business with postage
25 thereon fully prepaid at Los Angeles, California.

26 [] **BY PERSONAL SERVICE:** I caused the document, enclosed in a sealed envelope,
27 to be delivered by hand by ProLegal/ProCourier Attorney Service to the offices of the
28 addressee(s) named herein.

29 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California,
30 by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-
31 mail of record in this action.

32 [] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of
33 collection and processing correspondence for overnight delivery. Under that
34 practice, overnight packages are enclosed in a sealed envelope with a packing slip
35 attached thereto fully prepaid. The packages are picked up by the carrier at our
36 offices or delivered by our office to a designated collection site.

37 I declare under penalty of perjury under the laws of the State of California that the
38 foregoing is true and correct.

39 Executed this **December 19, 2023**, at Los Angeles, California.

40 */s/ Trevor Beach*

41 Trevor Beach

42 Type or Print Name

43 Signature