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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

KARLA RODRIGUEZ, 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.

PGC FOODS, LLC, a California limited
liability company; GRAFFIUS FOOD
SERVICES, INC., a California corporation;
JOKAR ENTERPRISES, INC., a California
corporation; MAKAR FOODS, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 37-2023-00039650-CU-OE-CTL

**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 §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (2) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (4) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (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);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (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 Karla Rodriguez, 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, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 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 jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

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

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

7 **THE PARTIES**

8 4. Plaintiff Karla Rodriguez is a resident of San Diego, in San Diego County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
10 approximately March 2023 to June 2023. Plaintiff worked as a Cook at Defendants' Jack in the
11 Box restaurant located at 7740 Hazard Drive, San Diego, California 92108. During her
12 employment, Plaintiff typically worked more than seven (7) hours per day and three (3) to five
13 (5) days per week. Plaintiff's primary job duties included, without limitation, cooking and
14 grilling food, cleaning the kitchen, and washing dishes.

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

18 6. GRAFFIUS FOOD SERVICES, INC. was and is, upon information and belief, a
19 California corporation, and at all times hereinafter mentioned, an employer whose employees
20 are engaged throughout this county and the State of California.

21 7. JOKAR ENTERPRISES, INC. was and is, upon information and belief, a
22 California corporation, and at all times hereinafter mentioned, an employer whose employees
23 are engaged throughout this county and the State of California.

24 8. MAKAR FOODS, INC. was and is, upon information and belief, a California
25 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
26 throughout this county and the State of California.

27 9. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
28 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the

1 complaint and serve such fictitiously named Defendants once their names and capacities
2 become known.

3 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of PGC FOODS, LLC; GRAFFIUS FOOD
5 SERVICES, INC.; JOKAR ENTERPRISES, INC.; and MAKAR FOODS, INC. at all relevant
6 times.

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

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

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

22 14. Under California law, Defendants are jointly and severally liable as employers
23 for the violations alleged herein because they have each exercised sufficient control over the
24 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
25 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
26 their work schedule and/or conditions of employment, determined their rate of pay, and
27 maintained their employment records. Defendants suffered or permitted Plaintiff and class
28 members to work and/or “engaged” Plaintiff and class members so as to create a common-law

1 employment relationship. As joint employers of Plaintiff and class members, Defendants are
2 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
3 class members under the law.

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

- 7 (a) jointly exercised meaningful control over the work performed by Plaintiff
8 and class members;
- 9 (b) jointly exercised meaningful control over Plaintiff's and class members'
10 wages, hours, and working conditions, including the quantity, quality
11 standards, speed, scheduling, and operative details of the tasks performed
12 by Plaintiff and class members;
- 13 (c) jointly required that Plaintiff and class members perform work which is
14 an integral part of Defendants' businesses; and
- 15 (d) jointly exercised control over Plaintiff and class members as a matter of
16 economic reality in that Plaintiff and class members were dependent on
17 Defendants, who shared the power to set the wages of Plaintiff and class
18 members and determined their working conditions, and who jointly
19 reaped the benefits from the underpayment of their wages and
20 noncompliance with other statutory provisions governing their
21 employment.

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

25 17. PGC FOODS, LLC; GRAFFIUS FOOD SERVICES, INC.; JOKAR
26 ENTERPRISES, INC.; MAKAR FOODS, INC.; and DOES 1 through 10 are therefore alter
27 egos of each other.

28 18. Adherence to the fiction of the separate existence of Defendants would permit an

1 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
2 liability for the wrongful acts committed by them under the name PGC.

3 19. Plaintiff further alleges, upon information and belief, that Defendants PGC
4 FOODS, LLC; GRAFFIUS FOOD SERVICES, INC.; JOKAR ENTERPRISES, INC.; and
5 MAKAR FOODS, INC. are alter egos of each other for the following reasons:

6 (a) On the California Secretary of State's website
7 (<https://bizfileonline.sos.ca.gov/>), PGC FOODS, LLC; GRAFFIUS
8 FOOD SERVICES, INC.; JOKAR ENTERPRISES, INC.; and MAKAR
9 FOODS, INC. have the same principal and mailing address, which is
10 "23736 BIRTCHER DR., LAKE FOREST, CA 92630";

11 (b) According to Statement of Information forms filed with the California
12 Secretary of State, PGC FOODS, LLC; GRAFFIUS FOOD SERVICES,
13 INC.; JOKAR ENTERPRISES, INC.; and MAKAR FOODS, INC. share
14 common managers, members, and/or directors, including, but not limited
15 to, Karen T[heresa] Graffius, Mark O Graffius, and George [T]
16 Crankshaw;

17 (c) On the California Secretary of State's website, PGC FOODS, LLC;
18 GRAFFIUS FOOD SERVICES, INC.; JOKAR ENTERPRISES, INC.;
19 and MAKAR FOODS, INC. share the same agent for service of process,
20 Karen T[heresa] Graffius; and

21 (d) On information and belief, PGC FOODS, LLC; GRAFFIUS FOOD
22 SERVICES, INC.; JOKAR ENTERPRISES, INC.; and MAKAR
23 FOODS, INC. utilize the same standardized employment forms and issue
24 the same employment policies.

25 **GENERAL ALLEGATIONS**

26 20. Defendants own and operate a chain of Jack in the Box franchise restaurants in
27 San Diego and Orange counties. Upon information and belief, Defendants maintain a single,
28 centralized Human Resources ("HR") department at their company headquarters in Lake Forest,

1 California, which is responsible for the recruiting and hiring of new employees, and
2 communicating and implementing Defendants' company-wide policies, including timekeeping
3 policies and meal and rest period policies, to employees throughout California.

4 21. In particular, Plaintiff and class members, on information and belief, received
5 the same standardized documents and/or written policies. Upon information and belief, the
6 usage of standardized documents and/or written policies, including new-hire documents,
7 indicate that Defendants dictated policies at the corporate level and implemented them
8 company-wide, regardless of their employees' assigned locations or positions. Upon
9 information and belief, Defendants set forth uniform policies and procedures in several
10 documents provided at an employee's time of hire.

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

19 23. Defendants continue to employ non-exempt or hourly paid employees in
20 California.

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

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

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to meal periods in accordance

1 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
2 additional hour of pay at their regular rates of pay when they were not provided with timely,
3 uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members were not
4 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
5 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

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 rest periods in accordance
8 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not authorized and permitted
10 to take a compliant rest period and that Plaintiff and class members were not authorized and
11 permitted to take compliant rest periods or provided with payment of one (1) additional hour of
12 pay at their regular rates of pay when they were not authorized and permitted to take a compliant
13 rest period.

14 28. 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 certain wages for
16 overtime compensation and that they were not receiving certain wages for overtime
17 compensation.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive at least minimum
20 wages for compensation and that they were not receiving at least minimum wages for work that
21 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and
22 class members were not paid at least minimum wages for work done off-the-clock.

23 30. 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 complete and
25 accurate wage statements in accordance with California law. In violation of the California
26 Labor Code, Plaintiff and class members were not provided complete and accurate wage
27 statements.

28 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
3 knowingly, and intentionally failed to do so.

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

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

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

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

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 36. At all times herein set forth, PAGA provides that any provision of law under the
28 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and

1 collected by the Labor and Workforce Development Agency (“LWDA”) for violations of the
2 California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by
3 aggrieved employees in a civil action brought on behalf of themselves and other current or
4 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 14 (a) The aggrieved employee or representative shall give written notice by
15 online filing with the LWDA and by certified mail to the employer of the
16 specific provisions of the California Labor Code alleged to have been
17 violated, including the facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be accompanied
20 by a filing fee of seventy-five dollars (\$75).
- 21 (c) The LWDA shall notify the employer and the aggrieved employee or
22 representative by certified mail that it does not intend to investigate the
23 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
24 postmark date of the aggrieved employee’s notice. Upon receipt of the
25 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
26 calendar days of the postmark date of the aggrieved employee’s notice,
27 the aggrieved employee may commence a civil action pursuant to
28 California Labor Code section 2699 to recover civil penalties.

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

4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated (other than those listed in Section 2699.5), including the facts
8 and theories to support the alleged violation.

9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(c) and any employer response to that notice shall be accompanied
11 by a filing fee of seventy-five dollars (\$75).

12 (c) The employer may cure the alleged violation within thirty-three (33)
13 calendar days of the postmark date of the notice sent by the aggrieved
14 employee or representative. The employer shall give written notice
15 within that period of time by certified mail to the aggrieved employee or
16 representative and by online filing with the LWDA if the alleged violation
17 is cured, including a description of actions taken, and no civil action
18 pursuant to Section 2699 may commence. If the alleged violation is not
19 cured within the 33-day period, the aggrieved employee may commence
20 a civil action pursuant to Section 2699.

21 41. On October 5, 2023, Plaintiff provided written notice by online filing to the
22 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
25 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
26 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
27 PAGA Case Number LWDA-CM-985956-23. A true and correct copy of Plaintiff's written
28 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

4 43. Thus, Plaintiff has satisfied the administrative prerequisites under California
5 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
6 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
7 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

20 46. As set forth below, Defendants have violated numerous provisions of both the
21 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
22 Order.

23 47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
24 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
25 private attorney general, seeks assessment and collection of civil penalties for herself, all other
26 aggrieved employees, and the State of California against Defendants for violations of California
27 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
28 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

48. 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.

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

50. 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").

51. 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").

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

53. 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.

54. 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 failed to provide Plaintiff and class members with meal periods;
- (b) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (c) 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 compensation to Plaintiff and class members;
- (d) Whether Defendants failed to pay Plaintiff and class members at least

1 minimum wages for all hours worked;

2 (e) Whether Defendants provided Plaintiff and class members with complete
3 and accurate wage statements as required by California Labor Code
4 section 226(a);

5 (f) Whether Defendants maintained accurate payroll records as required by
6 California Labor Code section 1174(d);

7 (g) Whether Defendants failed to pay earned overtime wages, minimum
8 wages, and/or meal and rest period premiums due to Plaintiff and class
9 members upon their discharge;

10 (h) Whether Defendants failed timely to pay overtime wages, minimum
11 wages, and/or meal and rest period premiums due to Plaintiff and class
12 members during their employment;

13 (i) Whether Defendants failed to reimburse Plaintiff and class members for
14 necessary and required business-related expenditures and/or losses
15 incurred by them in the scope of their employment;

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

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

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

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

- 1 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
2 the interests of each class member with whom she has a well-defined
3 community of interest, and Plaintiff's claims (or defenses, if any) are
4 typical of all class members as demonstrated herein.
- 5 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
6 the interests of each class member with whom she has a well-defined
7 community of interest and typicality of claims, as demonstrated herein.
8 Plaintiff acknowledges that she has an obligation to make known to the
9 Court any relationship, conflicts or differences with any class member.
10 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
11 governing class action discovery, certification, and settlement. Plaintiff
12 has incurred, and throughout the duration of this action, will continue to
13 incur costs and attorneys' fees that have been, are, and will be necessarily
14 expended for the prosecution of this action for the substantial benefit of
15 each class member.
- 16 (d) Superiority: The nature of this action makes the use of class action
17 adjudication superior to other methods. A class action will achieve
18 economies of time, effort, and expense as compared with separate
19 lawsuits, and will avoid inconsistent outcomes because the same issues
20 can be adjudicated in the same manner and at the same time for the entire
21 class.
- 22 (e) Public Policy Considerations: Employers in the State of California
23 violate employment and labor laws every day. Current employees are
24 often afraid to assert their rights out of fear of direct or indirect retaliation.
25 Former employees are fearful of bringing actions because they believe
26 their former employers might damage their future endeavors through
27 negative references and/or other means. Class actions provide the class
28 members who are not named in the complaint with a type of anonymity

1 that allows for the vindication of their rights while simultaneously
2 protecting their privacy.

3 **FIRST CAUSE OF ACTION**

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

5 **Violations**

6 **(Against all Defendants)**

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

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

16 58. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

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

25 60. During the relevant time period, on information and belief, Defendants had, and
26 continue to have, a company-wide policy and/or practice of strictly staffing their restaurant
27 locations based on the labor hours allocated by each location's labor or payroll budget set by
28 corporate. On information and belief, Defendants' uniform use of labor budgets resulted in

1 chronic understaffing and a lack of adequate meal period coverage, because there were too few
2 employees on duty to handle the workload and attend to customers, which included meeting a
3 2-minute time target/goal for drive-thru orders while simultaneously preparing mobile and
4 walk-in orders. Because Defendants did not employ or staff a sufficient number of employees
5 to meet customer demand, there was no one available to relieve employees needing meal period
6 coverage, and Plaintiff and class members were not always afforded timely, uninterrupted 30-
7 minute meal periods during shifts when they were entitled to receive a meal period.
8 Additionally, Defendants, on a company-wide basis, had a practice of failing to schedule meal
9 periods, which further caused Plaintiff and class members to not be relieved of their duties for
10 compliant meal periods.

11 61. As a result, Plaintiff and class members have had to work through all or part of
12 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
13 time before taking meal periods. For example, on at least five (5) occasions, Plaintiff took her
14 meal period late, after having worked in excess of five (5) hours into her shift, due to lack of
15 coverage.

16 62. Moreover, because Defendants' timekeeping system was integrated with the
17 company's point-of-sale ("POS") system (*see infra*), Plaintiff and class members were
18 sometimes forced to cut their meal periods short and/or remain under Defendants' control during
19 their meal periods. For example, Plaintiff would sometimes cut her meal periods short in order
20 to timely clock back in and return to work, because other employees were using the POS system
21 to handle customer transactions. Plaintiff and class members did not sign valid meal period
22 waivers on days that they were entitled to meal periods and were not relieved of all duties.

23 63. At all times herein mentioned, Defendants knew or should have known that, as a
24 result of these policies, Plaintiff and class members were not actually relieved of all duties to
25 take timely, uninterrupted meal periods. Defendants further knew or should have known that
26 Defendants did not pay Plaintiff and class members meal period premiums when meal periods
27 were late, interrupted, shortened, and/or missed.

28 64. Moreover, Defendants engaged in a company-wide practice and/or policy of not

1 paying all meal period premiums owed when compliant meal periods are not provided. Because
2 of this practice and/or policy, Plaintiff and class members have not received premium pay for
3 missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff
4 and class members compliant meal periods in violation of California Labor Code sections 226.7,
5 512(a), and 516 and failed to pay the full meal period premiums due.

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

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 12 **(Against all Defendants)**

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

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

18 68. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3 ½) hours.

24 69. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest periods
27 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
28 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

70. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide use of labor budgeting, understaffing, and the assignment of heavy workloads, prevented Plaintiff and class members from being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take rest periods.

71. Furthermore, on information and belief, Defendants maintained and implemented a company-wide on-premises rest period policy, which effectively required that Plaintiff and class members remain on the premises during their rest periods. Because Plaintiff and class members were restricted from leaving Defendants’ premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, Defendants effectively maintained control over Plaintiff and class members during rest periods.

72. As a result of Defendants’ practices and policies, Plaintiff and class members 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, throughout her employment, Plaintiff had to forego her rest periods at least two (2) times per week because the restaurant was busy, and she did not have sufficient rest period coverage.

73. Defendants have also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and

1 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
2 premium pay for all missed rest periods.

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

7 **THIRD CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 9 **(Against all Defendants)**

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

12 76. Labor Code section 1198 makes it illegal to employ an employee under
13 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
14 Code section 1198 requires that "... the standard conditions of labor fixed by the commission
15 shall be the ... standard conditions of labor for employees. The employment of any employee
16 ... under conditions of labor prohibited by the order is unlawful."

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

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

25 79. The applicable IWC Wage Order further provides that Defendants are and were
26 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
27 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
28 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the

employee, including nondiscretionary bonuses and incentive pay.

80. California Labor Code section 510 codifies the right to overtime compensation at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) 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.

81. 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.

82. During the relevant time period, Defendants' timekeeping system was integrated with the company's point-of-sale ("POS") system, resulting in Plaintiff and class members having to wait to clock in for the start of their shifts and to clock back in from their unpaid meal periods, because other employees were using the POS system to handle customer transactions. For example, Plaintiff was sometimes required to wait a few minutes under Defendants' control until a POS machine became available for clocking in, time for which she was not paid.

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

84. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class

1 members are entitled to recover from Defendants their unpaid overtime compensation, as well
2 as interest, costs, and attorneys' fees.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 5 **Minimum Wages** 6 **(Against all Defendants)**

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

9 86. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
10 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
11 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
12 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the
13 time during which an employee is subject to the control of an employer, and includes all the
14 time the employee is suffered or permitted to work, whether or not required to do so.” Cal.
15 Code Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

16 87. As stated, Defendants had a company-wide policy and/or practice of failing to
17 compensate Plaintiff and class members for their time spent waiting to clock in on Defendants’
18 POS system before their shifts and when clocking back in from meal periods. Defendants failed
19 to track this time Plaintiff and class members spent under the control of Defendants, and thus,
20 Plaintiff and class members received no compensation for this time.

21 88. Defendants did not pay minimum wages for all hours worked by Plaintiff and
22 class members. To the extent that these off-the-clock hours did not qualify for overtime
23 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
24 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

25 89. Defendants’ failure to pay Plaintiff and class members minimum wages violates
26 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
27 Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants
28 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

19 93. Because Defendants did not record the time Plaintiff and Subclass members spent
20 working off the clock, Defendants did not list the correct amount of gross wages and net wages
21 earned by Plaintiff and Subclass members in compliance with sections 226(a)(1) and 226(a)(5).
22 For the same reason, Defendants failed to accurately list the total number of hours worked by
23 Plaintiff and Subclass members, in violation of section 226(a)(2), and failed to list the applicable
24 hourly rates of pay in effect during the pay period and the corresponding accurate number of
25 hours worked at each hourly rate, in violation of section 226(a)(9).

26 94. The wage statement deficiencies also include, among other things, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
28 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for

1 which employees were paid; failing to list the name of the employee and only the last four digits
2 of his or her social security number or an employee identification number other than a social
3 security number; failing to list the name and address of the legal entity that is the employer;
4 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
5 the-clock.

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

16 96. California Labor Code section 1198 provides that the maximum hours of work
17 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
18 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
19 of any employees for longer hours than those fixed by the order or under conditions of labor
20 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
21 are required to keep accurate time records showing when the employee begins and ends each
22 work period and meal period. During the relevant time period, Defendants engaged in company-
23 wide practices and/or policies of failing to record actual hours worked, and thereby failed to
24 keep accurate records of work period and meal period start and end times for Plaintiff and
25 Subclass members, in violation of section 1198.

26 97. Plaintiff and Subclass members are entitled to recover from Defendants the
27 greater of their actual damages caused by Defendants’ failure to comply with California Labor
28 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per

1 employee.

2 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

22 102. Defendants' failure to pay Plaintiff and class members who are no longer
23 employed by Defendants their wages earned and unpaid at the time of discharge, or within
24 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
25 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
26 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
27 thirty (30) day maximum pursuant to California Labor Code section 203.

28 ///

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

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

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

105. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

106. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

107. 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.

108. Defendants' failure to 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)

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

110. 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 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."

111. During the relevant time period, Defendants required Plaintiff and class members to wear uniform shirts bearing the "Jack in the Box" company logo. However, Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with one (1) uniform shirt at the time of hire. Because Defendants failed to provide Plaintiff and class members with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and class members 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, Plaintiff's uniform shirt would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix her uniform shirt in with other laundry. As a result, she had to wash her uniform separately from her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniform. Thus, Defendants

1 failed to maintain uniforms they required Plaintiff and class members to wear during their shifts
2 and forced them to incur the cost of maintaining employee uniforms.

3 112. Defendants could have provided Plaintiff and class members with an adequate
4 number of uniforms or access to laundering services. Or, Defendants could have reimbursed
5 employees for the costs of their laundering expenses or provided a uniform maintenance
6 allowance. Instead, Defendants passed these operating costs off onto Plaintiff and class
7 members.

8 113. Defendants' company-wide policy and/or practice of passing on their operating
9 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
10 have intentionally and willfully failed to reimburse Plaintiff and class members for necessary
11 business-related expenses and costs.

12 114. Plaintiff and class members are entitled to recover from Defendants their
13 business-related expenses incurred during the course and scope of their employment, plus
14 interest.

15 **NINTH CAUSE OF ACTION**

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

17 **(Against all Defendants)**

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

20 116. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
22 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
23 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
24 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
25 Code sections not found in section 2699.5, including sections 516 and 1182.12.

26 117. Defendants' conduct, as alleged herein, violates numerous sections of the
27 California Labor Code, including, but not limited to, the following:

28 (a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the

1 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
2 and other aggrieved employees with meal periods, as alleged herein and
3 as set forth below;

4 (b) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
5 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
6 and other aggrieved employees to take rest periods, as alleged herein;

7 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC
8 Wage Order for Defendants' failure to compensate Plaintiff and other
9 aggrieved employees with all required overtime pay, as alleged herein
10 and as set forth below;

11 (d) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
12 and the applicable IWC Wage Order for Defendants' failure to
13 compensate Plaintiff and other aggrieved employees with at least
14 minimum wages for all hours worked, as alleged herein and as set forth
15 below;

16 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other aggrieved employees, as alleged herein;

19 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
20 IWC Wage Order for failure to maintain payroll records, as alleged
21 herein;

22 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
23 wages upon termination, as alleged herein;

24 (h) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment, as alleged herein; and

26 (i) Violation of Labor Code section 2802 for failure to reimburse other
27 aggrieved employees for all business expenses necessarily incurred, as
28 alleged herein.

118. As stated, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their restaurant locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, has resulted in a lack of meal period coverage for Plaintiff and other aggrieved employees. As a result, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Defendants also had a company-wide policy and/or practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees worked through meal periods and/or had meal periods interrupted in order to attend to their work duties.

119. Moreover, on information and belief, Defendants' company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Additionally, Defendants did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.

120. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

121. During the relevant time period, Defendants had a company-wide policy and/or practice of discouraging and impeding 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 Defendants' use of labor budgets and assignment of heavy workloads, led other aggrieved employees to work off-the-clock after their scheduled shift times. For example, on information and belief, Defendants' managers pressured other aggrieved employees to clock out at their scheduled shifts, but also required

1 them to complete certain tasks before they could leave for the day. This off-the-clock work
2 could have been recorded by Defendants, but they refused to do so to avoid payment of
3 additional wages to other aggrieved employees. Thus, Defendants failed to track all of the time
4 that employees spent performing work-related tasks after their scheduled shifts, and other
5 aggrieved employees received no compensation for this time.

6 122. Furthermore, as set forth above, on information and belief, due to Defendants'
7 uniform practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing
8 to schedule meal periods, and subsequent lack of meal period coverage, other aggrieved
9 employees were impeded from taking all uninterrupted meal periods to which they were entitled
10 and were required to work off-the-clock. And, as described above, Defendants' timekeeping
11 system did not permit other aggrieved employees to clock back in early when their meal periods
12 were interrupted or cut short. Thus, Defendants systematically failed to pay other aggrieved
13 employees for actual hours worked during unpaid meal periods because these hours were not
14 always correctly recorded.

15 123. Defendants' failure to compensate Plaintiff and/or other aggrieved employees at
16 least minimum wages for all hours worked off-the-clock, as alleged herein, in violation of
17 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC
18 Wage Order. To the extent that these off-the-clock hours qualified for overtime premium
19 payment, Defendants failed to pay Plaintiff and/or other aggrieved employees the balance of
20 overtime compensation in violation of California Labor Code sections 510 and 1198. Plaintiff
21 and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to
22 Labor Code sections 2699(a), (f), and (g).

23 **TENTH CAUSE OF ACTION**

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

25 **Unlawful Business Practices**

26 **(Against all Defendants)**

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

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

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

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

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

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

1 statements and failing to maintain accurate payroll records in violation of
2 California Labor Code sections 226(a), 1174(d), and 1198, and the
3 applicable IWC Wage Order, as alleged herein;

4 (f) Failing timely to pay all earned wages to Plaintiff and class members in
5 violation of California Labor Code section 204, as alleged herein; and

6 (g) Failing to reimburse Plaintiff and class members for all business expenses
7 necessarily incurred in violation of California Labor Code section 2802,
8 as alleged herein.

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

12 130. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
13 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
14 Defendants during a period that commences four years prior to the filing of the initial complaint;
15 a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
16 class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure
17 section 1021.5 and other applicable laws; and an award of costs.

18 **ELEVENTH CAUSE OF ACTION**

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

20 **Unfair Business Practices**

21 **(Against all Defendants)**

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

24 132. Defendants are "persons" as defined by California Business & Professions Code
25 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
26 associations.

27 133. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
28 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in

fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

135. 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.

136. 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 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

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

7. For all actual, consequential, and incidental losses and damages, according to proof;

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

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

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

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

As to the Second Cause of Action

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

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

14. For all actual, consequential, and incidental losses and damages, according to proof;

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

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

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

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

As to the Third Cause of Action

19. 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;

20. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

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

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

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

As to the Fourth Cause of Action

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

1 25. For general unpaid wages and such general and special damages as may be
2 appropriate;

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

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

7 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

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

11 30. That the Court declare, adjudge and decree that Defendants violated the
12 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
13 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
14 itemized wage statements thereto;

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

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

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

19 34. For attorneys' fees and costs pursuant to California Labor Code section
20 226(e)(1); and

21 35. For such other and further relief as the Court may deem equitable and
22 appropriate.

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

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

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

1 proof;

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

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

6 40. For attorneys' fees pursuant to California Code of Civil Procedure section
7 1021.5, or as otherwise provided by law; and

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

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

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

14 43. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 44. For statutory penalties according to proof pursuant to California Labor Code
17 section 210;

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

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

22 47. For such other and further relief as the Court may deem equitable and
23 appropriate.

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

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

28 49. For unpaid business-related expenses and such general and special damages as

1 may be appropriate;

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

4 51. For all actual, consequential, and incidental losses and damages, according to
5 proof;

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

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

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

11 54. That the Court declare, adjudge and decree that Defendants violated the
12 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
13 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by
14 failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all overtime
15 compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum
16 wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
17 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
18 earned wages upon termination); 204 (by failing to timely pay all earned wages during
19 employment); and 2802 (by failing to reimburse business expenses);

20 55. For civil penalties pursuant to the California Labor Code, including sections 210,
21 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
22 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
23 and 2802;

24 56. For attorneys' fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
26 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
27 1197, 1197.1, 1198, and 2802;

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

1 58. For such other and further relief as the Court may deem equitable and
2 appropriate.

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

4 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
5 to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff
6 and class members to take all rest periods, failing to provide Plaintiff and class members all
7 overtime wages due to them, failing to provide Plaintiff and class members all minimum wages
8 due to them, failing to provide Plaintiff and class members accurate and complete wage
9 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
10 to timely pay Plaintiff and class members all earned wages during employment, and failing to
11 reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful
12 business practice in violation of California Business and Professions Code sections 17200, *et*
13 *seq.*;

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

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

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

22 63. For such other and further relief as the Court may deem equitable and
23 appropriate.

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

25 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
26 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an
27 unfair business practice in violation of California Business and Professions Code sections
28 17200, *et seq.*;

1 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
2 from Plaintiff and class members and prejudgment interest from the day such amounts were due
3 and payable;

4 66. For the appointment of a receiver to receive, manage, and distribute any and all
5 funds disgorged from Defendants and determined to have been wrongfully acquired by
6 Defendants as a result of violations of California Business & Professions Code sections 17200,
7 *et seq.*;

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

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

11 69. For such other and further relief as the Court may deem equitable and
12 appropriate.
13

14 Dated: December 11, 2023

Respectfully submitted,

Capstone Law APC

16 By: 

17 Bevin Allen Pike
18 Daniel S. Jonathan
19 Trisha K. Monesi

Attorneys for Plaintiff Karla Rodriguez
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EXHIBIT “1”



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October 5, 2023

VIA ONLINE SUBMISSION

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

Subject: *Karla Rodriguez v. PGC Foods, LLC, et al.*

Dear PAGA Administrator:

This office represents Karla Rodriguez in connection with her claims under the California Labor Code. Ms. Rodriguez was an employee of PGC FOODS, LLC; GRAFFIUS FOOD SERVICES, INC.; JOKAR ENTERPRISES, INC.; and/or MAKAR FOODS, INC. For the purpose of this letter, Ms. Rodriguez collectively refers to these entities as "PGC."

The employers may be contacted directly at the addresses below:

PGC FOODS, LLC
23736 BIRTCHER DR
LAKE FOREST, CA 92630

GRAFFIUS FOOD SERVICES, INC.
23736 BIRTCHER DR
LAKE FOREST, CA 92630

JOKAR ENTERPRISES, INC.
23736 BIRTCHER DR
LAKE FOREST, CA 92630

MAKAR FOODS, INC.
23736 BIRTCHER DR.
LAKE FOREST, CA 92630

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

PGC employed Ms. Rodriguez as an hourly paid, non-exempt employee from approximately March 2023 to June 2023. Ms. Rodriguez worked as a Cook at PGC's Jack in the Box restaurant located at 7740 Hazard Drive, San Diego, California 92108. Ms. Rodriguez typically worked seven (7) hours per day and three (3) to five (5) days per week. At the time her employment ended, Ms. Rodriguez

was compensated approximately \$16.35 per hour. Her primary job duties included, without limitation, packaging cooking and grilling food, cleaning the kitchen, and washing dishes.

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

PGC’s Company-Wide and Uniform Payroll and HR Practices

PGC FOODS, LLC is a California liability company, while GRAFFIUS FOOD SERVICES, INC.; JOKAR ENTERPRISES, INC.; and MAKAR FOODS, INC. are California corporations. Together, they own and operate a chain of Jack in the Box franchise restaurants in San Diego and Orange counties. Upon information and belief, PGC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lake Forest, California, for all non-exempt, hourly paid employees working for PGC in California, including Ms. Rodriguez and other aggrieved employees. At all relevant times, PGC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Rodriguez and other aggrieved employees, regardless of their location or position.

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

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 Industrial Welfare Commission (“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

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

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, on information and belief, PGC had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. On information and belief, PGC's uniform use of labor budgets 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, which included meeting a 2-minute time target/goal for drive-thru orders while simultaneously preparing mobile and walk-in orders. Because PGC did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Ms. Rodriguez and other aggrieved employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, PGC, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Ms. Rodriguez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Ms. Rodriguez and other aggrieved employees have had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, on at least five (5) occasions, Ms. Rodriguez took her meal period late, after having worked in excess of five (5) hours into her shift, due to lack of coverage.

Moreover, because PGC's timekeeping system was integrated with the company's point-of-sale ("POS") system (*see infra*), Ms. Rodriguez and other aggrieved employees were sometimes forced to cut their meal periods short and/or remain under PGC's control during their meal periods. For example, Ms. Rodriguez would sometimes cut her meal periods short in order to timely clock back in and return to work, because other employees were using the POS system to handle customer transactions. Also, PGC's company-wide timekeeping system prevented other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out other aggrieved employees once they clocked out for a meal period and would not permit them to clock back in from a meal period before 30 minutes elapsed.

Further, PGC did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Rodriguez 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 herein mentioned, PGC knew or should have known that, as a result of these policies, Ms. Rodriguez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PGC further knew or should have known that PGC did not pay Ms. Rodriguez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, PGC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Rodriguez and other aggrieved employees have not received premium pay for all missed,

late, and interrupted meal periods. Alternatively, to the extent that PGC did pay other aggrieved employees for missed, late, and interrupted meal periods, PGC did so at the incorrect rates. In addition to an hourly wage, PGC paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PGC 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. Therefore, during times when other aggrieved employees received meal period premiums and these other forms of pay, PGC failed to pay full meal period premiums by paying a lower rate than required.

Accordingly, PGC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Rodriguez 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, PGC regularly failed to authorize and permit Ms. Rodriguez 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, PGC's company-wide use of labor budgeting, understaffing, and the assignment of heavy workloads, prevented Ms. Rodriguez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, PGC failed to schedule rest periods, which, coupled with PGC's failure to provide adequate rest period coverage, further led to Ms. Rodriguez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, PGC maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Rodriguez and other aggrieved employees remain on the premises during their rest periods. Because Ms. Rodriguez and other aggrieved employees were restricted from leaving PGC's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal

errands. Thus, PGC effectively maintained control over Ms. Rodriguez and other aggrieved employees during rest periods.

As a result of PGC's practices and policies, Ms. Rodriguez 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, throughout her employment, Ms. Rodriguez had to forego her rest periods at least two (2) times per week because the restaurant was busy, and she did not have sufficient rest period coverage.

PGC has also 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. Rodriguez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PGC did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PGC did not pay other aggrieved employees at the correct rate of pay for premiums because PGC 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, PGC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Rodriguez 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 §§ 510 and 1198 – Unpaid Overtime

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

PGC willfully failed to pay all overtime wages owed to Ms. Rodriguez and other aggrieved employees. During the relevant time period, Ms. Rodriguez 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, during the relevant time period, PGC's timekeeping system was integrated with the company's point-of-sale ("POS") system, resulting in Ms. Rodriguez and other aggrieved employees having to wait to clock in for the start of their shifts and to clock back in from their unpaid meal periods, because other employees were using the POS system to handle customer transactions. For example, Ms. Rodriguez was sometimes required to wait a few minutes under PGC's control until a POS machine became available for clocking in, time for which she was not paid.

Moreover, during the relevant time period, PGC had a company-wide policy and/or practice of discouraging and impeding 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 PGC's use of labor budgets and assignment of heavy workloads, led other aggrieved employees to work off-the-clock after their scheduled shift times. For example, on information and belief, PGC's managers pressured other aggrieved employees to clock out at their scheduled shifts, but also required them to complete certain tasks before they could leave for the day. This off-the-clock work could have been recorded by PGC, but it refused to do so to avoid payment of additional wages to other aggrieved employees. Thus, PGC failed to track all of the time that employees spent performing work-related tasks after their scheduled shifts, and other aggrieved employees received no compensation for this time.

Second, as stated above, PGC had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, has resulted in a lack of meal period coverage for Ms. Rodriguez and/or other aggrieved employees. As a result, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. PGC also had a company-wide policy and/or practice of failing to schedule meal periods, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, other aggrieved employees worked through meal periods and/or had meal periods interrupted in order to attend to their work duties. PGC did not compensate other aggrieved employees for the time they spent working off the clock during meal periods.

Also, as stated, PGC's company-wide timekeeping system prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system prevented employees from clocking back in from a meal period until 30 minutes elapsed. Thus, PGC's timekeeping system prevented other aggrieved employees from recording all hours worked when meal periods were missed, short, and/or interrupted.

PGC knew or should have known that as a result of these company-wide practices and/or policies, Ms. Rodriguez and other aggrieved employees were performing their assigned duties off-the-clock, and were suffered or permitted to perform work for which they were not paid. Because Ms. Rodriguez and other aggrieved employees sometimes worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Rodriguez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Further, PGC did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. PGC failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, PGC failed to pay all overtime wages by paying a lower overtime rate than required.

PGC's failure to pay Ms. Rodriguez 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. Rodriguez 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 stated, PGC had a company-wide policy and/or practice of failing to compensate Ms. Rodriguez and other aggrieved employees for their time spent waiting to clock in on PGC’s POS system before their shifts and when clocking back in from meal periods. PGC failed to track this time Ms. Rodriguez and other aggrieved employees spent under the control of PGC, and thus, Ms. Rodriguez and other aggrieved employees received no compensation for this time.

Moreover, as stated above, as a result of PGC’s restrictions on overtime accrual, PGC systematically failed to pay other aggrieved employees for actual hours worked, because these hours were not accurately recorded. Because PGC discouraged and impeded other aggrieved employees from recording hours worked that were outside of their scheduled shifts, other aggrieved employees were required to perform work off-the-clock after their scheduled shifts.

Furthermore, as set forth above, on information and belief, due to PGC’s uniform practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to schedule meal periods, and subsequent lack of meal period coverage, other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. And, as described above, PGC’s timekeeping system did not permit other aggrieved employees to clock back in early when their meal periods were interrupted or cut short. Thus, PGC systematically failed to pay other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, PGC did not pay minimum wages for all hours worked by Ms. Rodriguez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PGC 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, PGC regularly failed to pay at least minimum wages to Ms. Rodriguez 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. Rodriguez 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(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. PGC has not provided Ms. Rodriguez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set

forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PGC has knowingly and intentionally provided Ms. Rodriguez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PGC issued uniform wage statements to Ms. Rodriguez 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 and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, PGC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

In addition, because PGC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, PGC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, PGC failed to list the correct amount of net wages in violation of section 226(a)(5). PGC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, 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. . . ." At all relevant times, and in violation of Labor Code section 1174(d), PGC willfully failed to maintain accurate payroll records for Ms.

Rodriguez 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, PGC engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period and/or meal period start and end times for Ms. Rodriguez and other aggrieved employees, in violation of section 1198. Also, in light of PGC’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PGC kept no records of meal start and end times for second meal periods.

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

Ms. Rodriguez 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.

PGC willfully failed to pay Ms. Rodriguez and other aggrieved employees who are no longer employed by PGC the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving PGC's employ.

Ms. Rodriguez 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 § 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, PGC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because PGC 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 usual or scheduled day's work.

PGC 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. For example, PGC's managers sent other aggrieved employees home before they had an opportunity to work at least half of their scheduled shift because business was slow, but on information and belief, other aggrieved employees were only paid for the time they had worked. Although other aggrieved employees would

report to work based on the schedule that PGC provided to them, PGC 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 § 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 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."

During the relevant time period, PGC required Ms. Rodriguez and other aggrieved employees to wear uniform shirts bearing the "Jack in the Box" company logo. However, PGC did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, PGC only provided Ms. Rodriguez with one (1) uniform shirt at the time of hire. Because PGC failed to provide Ms. Rodriguez and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Rodriguez 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. Rodriguez's uniform shirt would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that she was unable to mix her uniform shirt in with other laundry. As a result, she had to wash her uniform separately from her regular clothing, thus incurring additional laundry expenses for the upkeep of her uniform. Thus, PGC failed to maintain uniforms they required Ms. Rodriguez and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PGC could have provided Ms. Rodriguez and other aggrieved employees with an adequate number of uniforms or access to laundering services. Or, PGC could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, PGC passed these operating costs off onto Ms. Rodriguez and other aggrieved employees.

Thus, PGC 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. Rodriguez 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.” PGC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Rodriguez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Rodriguez 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. Rodriguez, 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 PGC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Rodriguez 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:

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

Best Regards,


Anthony Castillo

Copy: PGC FOODS, LLC (via U.S. Certified Mail); GRAFFIUS FOOD SERVICES, INC. (via U.S. Certified Mail); JOKAR ENTERPRISES, INC. (via U.S. Certified Mail); MAKAR FOODS, INC. (via U.S. Certified Mail)

Capstone Law, APC
 1875 Century Park, East, 1000
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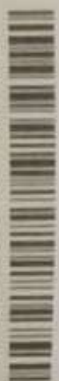
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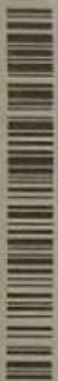
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Janet Herrera

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

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.GRAFFIUS FOOD SERVICES, INC.
23736 BIRTCHER DR
LAKE FOREST, CA 92630

9590 9402 7706 2122 1504 52

2. Article Number (Transfer from service label)

7022 2410 0000 2264 5324

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Janet Herrera

C. Date of Delivery

10-10

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

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,

PGC FOODS, LLC
23736 BIRTCHER DR
LAKE FOREST, CA 92630

9590 9402 7706 2122 1504 45

2. Article Number (Transfer from service label)

7022 2410 0000 2264 5300

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Janet Herrera

C. Date of Delivery

10-10

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

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

MAKAR FOODS, INC.
23736 BIRTCHER DR.
LAKE FOREST, CA 92630

9590 9402 7706 2122 1504 69

2. Article Number (Transfer from service label)

7022 2410 0000 2264 5331

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

Janet Herrera

C. Date of Delivery

10-10

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

Restricted Delivery

Domestic Return Receipt

1 **PROOF OF SERVICE**

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

5 On **December 11, 2023**, I served the documents described as: **FIRST AMENDED
6 CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE
7 ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** by
8 sending [] the original or [✓] a true copy thereof to the interested parties as follows:

9 Karen Theresa Graffius
10 23736 Birtcher Drive
11 Lake Forest, CA 92630

Registered Agents for Defendants
PGC FOODS, LLC; GRAFFIUS FOOD
SERVICES, INC.; JOKAR ENTERPRISES,
INC.; and MAKAR FOODS, INC.

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

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

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct. Executed this **December 11, 2023**, at Los Angeles, California.

23 Xochitl Tapia

24 _____
25 Type or Print Name

26 
27 _____
28 Signature