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FILED

JAN 22 2024

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

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

Plaintiff,

vs.

CAVALLO POINT LLC, a California limited liability company; CPFB TENANT, LLC, a Delaware limited liability company; CPFB HOLDINGS, LLC, a Delaware limited liability company; CPFB OWNER, LLC, a Delaware limited liability company; DIAMONDROCK HOSPITALITY COMPANY, a Maryland corporation; PASSPORT-FT. BAKER MANAGEMENT LLC, a California limited liability company; PASSPORT RESORTS, LLC, a California limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CV 0001875

COMPLAINT – PAGA ENFORCEMENT ACTION

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

Jury Trial Demanded

Plaintiff Daimer Fajardo, as an aggrieved employee and on behalf of the State of California and all other non-party Aggrieved Employees, alleges as follows:

JURISDICTION AND VENUE

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

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

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

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

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

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

THE PARTIES

6. Plaintiff Daimer Fajardo is a resident of Novato, in Marin County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately January 2022 to January 2023. Plaintiff worked for Defendants as a Busser at their hotel location in Sausalito, California. Plaintiff typically worked eight (8) hours or more per day, and six (6) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately $17.00 per hour. Plaintiff's job duties included, without limitation, preparing, cleaning, and clearing tables, assisting servers and bartenders.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute arbitration agreements at the time of their hire or during their employment. On further information and belief, Defendants' arbitration agreements were and are both procedurally and substantively unconscionable. Specifically, Defendants presented employees with a "VOLUNTARY MUTUAL AGREEMENT TO ARBITRATE CLAIMS" ("Arbitration Agreement") which had to be reviewed and acknowledged immediately. Specifically, the Arbitration Agreement was among several documents presented to employees for signature during the orientation process, including an At-Will Employment Acknowledgment of Receipt; Worker's Compensation Information; Employee Handbook Acknowledgment; Employee's Parking Acknowledgement; Harassment Policy Acknowledgement; Unlawful Harassment Policy; and Meal Breaks Acknowledgement Form. Also, employees did not have a meaningful opportunity to negotiate the terms of the

Arbitration Agreement. Rather, they were provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with other onboarding documents.

8. CAVALLO POINT LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. CPFB TENANT, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

10. CPFB HOLDINGS, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

11. CPFB OWNER, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

12. DIAMONDROCK HOSPITALITY COMPANY, was and is, upon information and belief, a Maryland corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

13. PASSPORT-FT. BAKER MANAGEMENT LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

14. PASSPORT RESORTS, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

16. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

were the partners, agents, owners, or managers of CAVALLO POINT LLC; CPFB TENANT, LLC; CPFB HOLDINGS, LLC; CPFB OWNER, LLC; DIAMONDROCK HOSPITALITY COMPANY; PASSPORT-FT. BAKER MANAGEMENT LLC; and PASSPORT RESORTS, LLC at all relevant times.

17. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, CAVALLO POINT LLC; CPFB TENANT, LLC; CPFB HOLDINGS, LLC; CPFB OWNER, LLC; DIAMONDROCK HOSPITALITY COMPANY; PASSPORT-FT. BAKER MANAGEMENT LLC; PASSPORT RESORTS, LLC; and/or DOES 1 through 10 (collectively, "Defendants" or "CAVALLO"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

20. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and other non-party Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-party Aggrieved Employees, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work

and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a common-law employment relationship. As joint employers of Plaintiff and other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties available to Plaintiff and other non-party Aggrieved Employees under the law.

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

(a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;

(b) jointly exercised meaningful control over Plaintiff’s and other non-party Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;

(c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and

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

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

23. CAVALLO POINT LLC; CPFB TENANT, LLC; CPFB HOLDINGS, LLC;

CPFB OWNER, LLC; DIAMONDROCK HOSPITALITY COMPANY; PASSPORT-FT. BAKER MANAGEMENT LLC; PASSPORT RESORTS, LLC; and/or DOES 1 through 10 are therefore alter egos of each other.

24. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name CAVALLO.

25. Plaintiff further alleges, upon information and belief, that the Defendants CAVALLO POINT LLC; CPFB TENANT, LLC; CPFB HOLDINGS, LLC; CPFB OWNER, LLC; DIAMONDROCK HOSPITALITY COMPANY; PASSPORT-FT. BAKER MANAGEMENT LLC; and PASSPORT RESORTS, LLC are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (https://bizfileonline.sos.ca.gov/), CAVALLO POINT LLC; PASSPORT-FT. BAKER MANAGEMENT LLC; and PASSPORT RESORTS, LLC have the same principal and mailing address, "475 GATES ROAD STE 225, SAUSALITO, CA 94965";

(b) On the California Secretary of State's website, CPFB TENANT, LLC; CPFB HOLDINGS, LLC; CPFB OWNER, LLC and DIAMONDROCK HOSPITALITY COMPANY have the same principal and mailing address, 2 BETHESDA METRO CENTER, SUITE 14000, BETHESDA, MD 20814;

(c) According to their most recent "Statement of Information" forms filed with the California Secretary of State, CAVALLO POINT LLC; PASSPORT-FT. BAKER MANAGEMENT LLC; and PASSPORT RESORTS, LLC share the manager/members, including, but not limited to, Peter M. Heinemann;

(d) According to the California Secretary of State's website, CAVALLO POINT LLC; PASSPORT-FT. BAKER MANAGEMENT LLC; and

PASSPORT RESORTS, LLC share the same agent for service of process, Peter M. Heinemann;

(e) According to the California Secretary of State's website, CPFB TENANT, LLC; CPFB HOLDINGS, LLC; and CPFB OWNER, LLC share the same agent for service of process, "CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC – LAWYERS INCORPORATING SERVICE"; and

(f) On information and belief, CAVALLO POINT LLC; CPFB TENANT, LLC; CPFB HOLDINGS, LLC; CPFB OWNER, LLC; DIAMONDROCK HOSPITALITY COMPANY; PASSPORT-FT. BAKER MANAGEMENT LLC; and PASSPORT RESORTS, LLC utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

26. Defendants operate and market high-end destination boutique resort properties. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Sausalito, California, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

27. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures

in several documents provided at an employee's time of hire.

28. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Sausalito, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

29. Defendants continue to employ non-exempt or hourly paid employees in California.

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

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

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

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

should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period and that Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods or provided with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

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

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

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

37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In

violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

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

39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible time periods.

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

41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they were required to pay departing employees all vested vacation wages that were owed to them at the end of their employment. In violation of the California Labor Code, Defendants failed to pay other non-party Aggrieved Employees all vested vacation wages at the end of their employment, causing a forfeiture of vested vacation wages.

42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income, all income derived from incentive pay, nondiscretionary bonuses, mandatory service charges, and/or

other forms of compensation. In violation of the California Labor Code, Defendants failed to include all forms of remuneration in calculating the regular rate of pay for sick leave pay.

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

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

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

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

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

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

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

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

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

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

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

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged

> violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

49. On November 15, 2023, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-994533-23. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated November 15, 2023, is attached hereto as "Exhibit 1."

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

51. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198.

52. 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 "[t]he civil penalties provided for in this section are in addition

to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section 558 for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

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

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

55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

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

section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516, and 1182.12.

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

(a) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;

(b) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;

(c) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;

(d) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;

(e) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;

(f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;

(h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;

(i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;

(j) Violation of Labor Code section 227.3 for failure to pay other non-party Aggrieved Employees all vested vacation time upon termination, as set forth below; and

(k) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave paid to other non-party Aggrieved Employees, as set forth below.

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

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

60. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

62. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, 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.

63. First, during the relevant period, on information and belief, Defendants had, and continue to have, company-wide policies and/or practices of understaffing their restaurant locations while assigning heavy workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage. Because Defendants 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 Plaintiff and other non-party Aggrieved Employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Additionally, Defendants, on a company-wide basis, had a practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods. For example, Plaintiff missed his meal periods twice per week in order to meet the restaurant's customer demand.

64. Second, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants' management sometimes adjusted Plaintiff's and other non-party Aggrieved Employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to limit the meal penalties that Defendants would otherwise owe.

65. Third, Defendants did not provide other non-party Aggrieved Employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff and other non-party 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.

66. Moreover, Defendants had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. Defendants took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, Defendants' "Meal Period Waiver" and "Agreement to Waive Second Meal Break" forms require employees to provide written notice should they wish to revoke the waiver. Defendants' presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they were entitled.

67. Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

> [A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal periods did not arise until Defendants had employed them for a full five (5) hours.

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

69. Moreover, Defendants 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, Plaintiff and other non-party Aggrieved Employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees the correct rate of pay for premiums because Defendant systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in the regular rate of pay. Therefore, during times when other non-party Aggrieved Employees received meal period premiums and these other forms of pay, Defendants failed to pay full meal period premiums by paying a lower rate than required.

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

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

71. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other

non-party Aggrieved Employees' employment by Defendants.

72. At all relevant times, 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.

73. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

74. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7©, Plaintiff and other non-party Aggrieved Employees 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.

75. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party 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, Defendants' company-wide practices and/or policies of understaffing while assigning heavy workloads prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take rest periods. Additionally, Defendants failed to adhere to a schedule for rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

76. Furthermore, upon information and belief, Defendants maintained and implemented a company-wide on-premises rest period policy, which effectively required that Plaintiff and other non-party Aggrieved Employees remain on the premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees 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 running personal errands. Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved Employees during rest periods.

77. As a result of Defendants' practices and policies, Plaintiff and other non-party 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 his employment, Plaintiff had to regularly forego his rest periods because the restaurant was busy, and he did not have sufficient rest period coverage. When Plaintiff was able to take rest periods, they were often interrupted by his supervisors asking him to return to work to clean and clear tables.

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

79. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved

Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

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

82. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

83. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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.

84. 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.

85. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time period, Plaintiff and other non-party 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 worked were not recorded.

86. During the relevant period, as stated, Defendants' company-wide policies and/or practices of understaffing their restaurants while assigning heavy workloads resulted in a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage because there were too few employees on duty to handle the workload and attend to customers. Because Defendants 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 Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Also, as stated, Defendants had a practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for complaint meal periods. Consequently, Plaintiff and other non-party Aggrieved Employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their duties and handle customer demand, time for which they were not paid.

87. Further, as stated, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants' management sometimes adjusted Plaintiff's and other non-party Aggrieved Employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that Defendants would otherwise owe. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods because these hours were not always correctly

recorded.

88. Defendants knew or should have known that, as a result of these company-wide practices and/or policies, Plaintiff and other non-party 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 Plaintiff and other non-party Aggrieved Employees 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 other non-party Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked.

89. Furthermore, Defendants did not pay other non-party Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges, 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 non-party Aggrieved Employees worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

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

FAILURE TO PAY MINIMUM WAGES

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

91. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time

during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

92. As stated above, due to Defendants' policies and/or practices of understaffing their restaurants while assigning heavy workloads and failing to schedule meal periods, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants' management sometimes adjusted Plaintiff's and other non-party Aggrieved Employees' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

93. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants 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, and 1198.

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

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS

VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

95. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized

wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

96. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

98. Second, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal

and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

99. Third, and separate from these violations, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to list the correct address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Plaintiff's and other non-party Aggrieved Employees' wage statements incorrectly list CAVALLO POINT LLC's address as "PO Box 880, Bodega Bay, CA, 94923" but, according to the California Secretary of State's website, the entity address should be "475 GATE 5 ROAD, STE 225, SAUSALITO, CA, 94965."

100. 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 of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock.

101. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a

$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party 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.

102. 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, Defendants engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Also, in light of Defendants' failure to provide other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

104. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

105. At all relevant times herein, 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, at all relevant times 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.

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

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

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

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

109. On information and belief, Defendants have a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of

adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Defendants terminated Plaintiff on or about January 21, 2023; however, Defendants did not tender Plaintiff's final wages to him until February 3, 2023. Thus, Defendants failed to pay Plaintiff his final wages within the requisite time limit, in violation of California Labor Code section 201.

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

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

FAILURE TO PAY ALL VESTED VACATION TIME AND PAID TIME OFF UPON TERMINATION

VIOLATION OF LABOR CODE SECTION 227.3

112. At all relevant times herein, California Labor Code section 227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

113. Defendants had a company-wide policy and practice of failing to pay other non-

party Aggrieved Employees all vested vacation wages that were owed to them at the end of their employment in violation of California Labor Code section 227.3. Specifically, Defendants failed to properly calculate and pay all earned vested vacation time due to the hours other non-party Aggrieved Employees worked off-the-clock pursuant to their company-wide polices and/or practices.

114. Defendants' failure to pay other non-party Aggrieved Employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY

VIOLATION OF LABOR CODE SECTION 246 AND 248.6

115. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, Labor Code section 246(b)(4) provides that employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

116. At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Effective through December 31, 2022, Labor Code section 248.6(b)(3)(A) provides that each hour of COVID-19

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

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

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 226.7, 512(a), 516, and1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 227.3 (by failing to pay all vested vacation wages upon termination); and 246 and 248.6 (by failing to properly calculate sick leave pay);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 510, 512(a), 516,

1174(d), 1182.12, 1194, 1197, and 1198;

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

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

Dated: January 22, 2024

Respectfully submitted,

Capstone Law APC

By: ______________________________
Orlando Villalba
Helga Hakimi
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EXHIBIT “1”

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November 15, 2023

VIA ONLINE SUBMISSION

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

Subject: *Daimer Fajardo v. Cavallo Point LLC, et al.*

Dear PAGA Administrator:

This office represents Daimer Fajardo in connection with his claims under the California Labor Code. Mr. Fajardo was an employee of CAVALLO POINT LLC; CPFB TENANT, LLC; CPFB HOLDINGS, LLC; CPFB OWNER, LLC; DIAMONDROCK HOSPITALITY COMPANY; PASSPORT-FT. BAKER MANAGEMENT LLC; and/or PASSPORT RESORTS, LLC. For the purpose of this letter, Mr. Fajardo collectively refers to these entities as "CAVALLO."

The employers may be contacted directly at the addresses below:

CAVALLO POINT LLC
475 GATE 5 ROAD, STE 225
SAUSALITO, CA 94965

CPFB TENANT, LLC
2 BETHESDA METRO CENTER, SUITE 1400
BETHESDA, MD 20814

CPFB HOLDINGS, LLC
2 BETHESDA METRO CENTER, SUITE 1400
BETHESDA, MD 20814

CPFB OWNER, LLC
2 BETHESDA METRO CENTER, SUITE 1400
BETHESDA, MD 20814

DIAMONDROCK HOSPITALITY COMPANY
2 BETHESDA METRO CENTER, SUITE 1400
BETHESDA, MD 20814

PASSPORT-FT. BAKER MANAGEMENT LLC
475 GATE 5 ROAD, STE 225
SAUSALITO, CA 94965

PASSPORT RESORTS, LLC
475 GATE 5 ROAD, STE 225
SAUSALITO, CA 94965

Mr. Fajardo 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"). Mr. Fajardo seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CAVALLO 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.

CAVALLO employed Mr. Fajardo as an hourly paid, non-exempt Busser from approximately January 2022 to January 2023. During his employment, Mr. Fajardo typically worked eight (8) or more hours per day and four (4) to six (6) or more days per week. At the time his employment ended, Mr. Fajardo was compensated approximately $17.00 per hour. His primary job duties included, without limitation, preparing, cleaning, and clearing tables, assisting servers and bartenders.

CAVALLO committed one or more of the following Labor Code violations against Mr. Fajardo, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c): [1]

CAVALLO's Company-Wide and Uniform Payroll and HR Practices

CAVALLO POINT LLP; PASSPORT-FT. BAKER MANAGEMENT LLC; and PASSPORT RESORTS, LLC are California limited Liability companies. CPFB TENANT, LLC; CPFB HOLDINGS, LLC; and CPFB OWNER, LLC are Delaware limited liability companies. DIAMONDROCK HOSPITALITY COMPANY is a Maryland corporation. Together, they operate Cavallo Point – the Lodge at the Golden Gate, a luxury hotel and resort. Upon information and belief, CAVALLO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Sausalito, California, for all non-exempt, hourly paid employees working for CAVALLO in California, including Mr. Fajardo and other aggrieved employees. At all relevant times, CAVALLO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Fajardo and other aggrieved employees, regardless of their location or position.

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

[1] These facts, theories, and claims are based on Mr. Fajardo's experience and counsel's review of those records currently available relating to Mr. Fajardo'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, Mr. Fajardo reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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 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.

First, during the relevant period, on information and belief, CAVALLO had, and continues to have, a company-wide policy and/or practice of understaffing its restaurant locations while assigning heavy workloads, resulting in a failure to provide Mr. Fajardo and other aggrieved employees with adequate meal period coverage. Because CAVALLO 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 Mr. Fajardo 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, CAVALLO, on a company-wide basis, had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Fajardo and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Fajardo missed his meal periods twice per week in order to meet the restaurant's customer demand.

Second, on information and belief, because CAVALLO frowned upon employees accruing meal period penalties, CAVALLO's management sometimes adjusted Mr. Fajardo's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to limit the meal penalties that CAVALLO would otherwise owe.

Third, CAVALLO 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. Mr. Fajardo 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.

Moreover, CAVALLO had a company-wide policy of requiring all employees to sign blanket meal period waivers. CAVALLO took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, CAVALLO's "Meal Period Waiver" and "Agreement to Waive Second Meal Break" forms require employees to provide written notice should they wish to revoke the waiver. CAVALLO's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Fajardo and/or other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

> [A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That CAVALLO required Mr. Fajardo and/or other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because CAVALLO's obligation to provide Mr. Fajardo and/or other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, CAVALLO knew or should have known that, as a result of these policies, Mr. Fajardo and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. CAVALLO further knew or should have known that it did not pay Mr. Fajardo and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, CAVALLO 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, Mr. Fajardo and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that CAVALLO did pay other aggrieved employees for missed, late, and interrupted meal periods, CAVALLO did so at the incorrect rates. In addition to an hourly wage, CAVALLO paid other aggrieved employees incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration. However, in violation of the California Labor Code, CAVALLO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, 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, CAVALLO failed to pay full meal period premiums by paying a lower rate than required.

Accordingly, CAVALLO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Fajardo 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).

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

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, CAVALLO regularly failed to authorize and permit Mr. Fajardo 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, CAVALLO's company-wide practices of understaffing while assigning heavy workloads prevented Mr. Fajardo and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CAVALLO failed to adhere to a schedule for rest periods, which, coupled with CAVALLO's failure to provide adequate rest period coverage, further led to Mr. Fajardo and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, CAVALLO maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Fajardo and other aggrieved employees remain on the premises during their rest periods. Because Mr. Fajardo and other aggrieved employees were restricted from leaving CAVALLO'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, CAVALLO effectively maintained control over Mr. Fajardo and other aggrieved employees during rest periods.

As a result of CAVALLO's practices and policies, Mr. Fajardo 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 his employment, Mr. Fajardo had to regularly forego his rest periods because the restaurant was busy, and he did not have sufficient rest period coverage. When Mr. Fajardo was able to take rest periods, they were often interrupted by his supervisors asking him to return work to clean and clear tables.

CAVALLO 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, Mr. Fajardo and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CAVALLO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CAVALLO did not pay other aggrieved employees at the correct rate of pay for premiums because CAVALLO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, mandatory service charges, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, CAVALLO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Fajardo 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.

CAVALLO willfully failed to pay all overtime wages owed to Mr. Fajardo and other aggrieved employees. During the relevant time period, Mr. Fajardo 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.

As set forth above, CAVALLO's company-wide policy and/or practice of understaffing its restaurants while assigning heavy workloads resulted in a failure to provide Mr. Fajardo and other aggrieved employees with adequate meal period coverage because there were too few employees on duty to handle the workload and attend to customers. Because CAVALLO 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 Mr. Fajardo and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Also, as stated, CAVALLO had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Fajardo and other aggrieved employees to not be relieved of their duties for complaint meal periods. Consequently, Mr. Fajardo and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their duties and handle customer demand, time for which they were not paid.

Further, as stated, on information and belief, because CAVALLO frowned upon employees accruing meal period penalties, CAVALLO's management sometimes adjusted Mr. Fajardo's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that CAVALLO would otherwise owe. Thus, CAVALLO systematically failed to pay Mr. Fajardo and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

CAVALLO knew or should have known that as a result of these company-wide practices and/or policies, Mr. Fajardo 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 Mr. Fajardo 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, Mr. Fajardo and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, CAVALLO did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. CAVALLO failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, mandatory service charges, 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, CAVALLO failed to pay all overtime wages by paying a lower overtime rate than required.

CAVALLO's failure to pay Mr. Fajardo 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. Mr. Fajardo 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).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to CAVALLO's policies and/or practices of understaffing its restaurants while assigning heavy workloads and failing to schedule meal periods, Mr. Fajardo and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CAVALLO's management adjusted Mr. Fajardo's and other aggrieved employees' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, CAVALLO systematically failed to pay Mr. Fajardo and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CAVALLO did not pay minimum wages for all hours worked by Mr. Fajardo and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CAVALLO 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, CAVALLO regularly failed to pay at least minimum wages to Mr. Fajardo 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. Mr. Fajardo 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

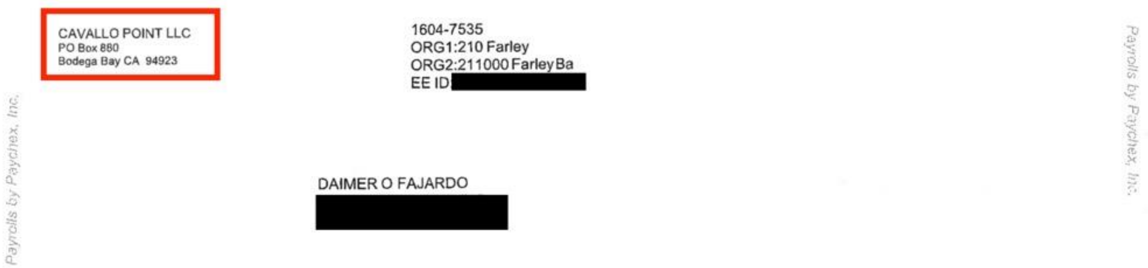
California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. CAVALLO has not provided Mr. Fajardo and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to 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, CAVALLO has knowingly and intentionally provided Mr. Fajardo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CAVALLO issued uniform wage statements to Mr. Fajardo and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages meal and rest period premiums and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, CAVALLO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because CAVALLO did not record the time Mr. Fajardo and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), CAVALLO did not list the correct amount of gross wages and net wages earned by Mr. Fajardo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CAVALLO failed to accurately list the total number of hours worked by Mr. Fajardo 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).

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

Third, and separately from these violations, CAVALLO issued uniform wage statements to Mr. Fajardo and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Fajardo's and other aggrieved employees' wage statements incorrectly list CAVALLO POINT LLC's address as "PO Box 880, Bodega Bay, CA, 94923," but according to the California Secretary of State's website, the entity address should be "475 GATE 5 ROAD, STE 225, SAUSALITO, CA 94965." *See example paystub below.*


CAVALLO POINT LLC
PO Box 880
Bodega Bay CA 94923

1604-7535
ORG1:210 Farley
ORG2:211000 Farley Ba
EE ID [redacted]

DAIMER O FAJARDO
[redacted]

Payrolls by Paychex, Inc.

Payrolls by Paychex, Inc.

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 of legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), CAVALLO willfully failed to maintain accurate payroll records for Mr. Fajardo 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, CAVALLO engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Fajardo and other aggrieved employees, in violation of section 1198. Also, in light of CAVALLO's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, CAVALLO kept no records of meal start and end times for second meal periods.

Because CAVALLO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Fajardo 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, Mr. Fajardo 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.

Mr. Fajardo 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, CAVALLO willfully failed to pay Mr. Fajardo and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Mr. Fajardo 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.

On information and belief, CAVALLO has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Fajardo was terminated on or about January 21, 2023; however, CAVALLO did not provide Mr. Fajardo with his final paycheck until February 3, 2023. Thus, CAVALLO failed to pay Mr. Fajardo his final wages immediately, in violation of California Labor Code section 201.

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

Mr. Fajardo 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 § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

CAVALLO had a company-wide policy and practice of failing to pay other aggrieved employees all vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3 Specifically, CAVALLO failed to properly calculate and pay all earned vested vacation time due to the hours other aggrieved employees worked off-the-clock pursuant to its company-wide polices and/or practices.

CAVALLO's failure to pay other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. 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 §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

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

CAVALLO's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

<u>California Labor Code § 558(a)</u>

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

Accordingly, Mr. Fajardo seeks the remedies set forth in Labor Code section 558 for himself, 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, Mr. Fajardo, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against

CAVALLO for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Fajardo's reasonable attempt to settle his dispute with CAVALLO prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CAVALLO of Mr. Fajardo's aforementioned grievances and the proposed remedies as detailed below, while affording CAVALLO a reasonable opportunity to satisfy Mr. Fajardo's demands.

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

1. CAVALLO shall pay Mr. Fajardo and all other aggrieved employees employed by CAVALLO at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. CAVALLO shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.

3. CAVALLO shall conduct a survey or interview all current and former aggrieved employees in California who worked for CAVALLO in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided and the number of rest periods which were not authorized and permitted, with the investigation to be completed within 60 days.

4. CAVALLO shall pay Mr. Fajardo and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. CAVALLO also shall pay Mr. Fajardo and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. CAVALLO shall pay accrued legal interest to Mr. Fajardo and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

6. CAVALLO shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.

7. CAVALLO shall properly calculate Mr. Fajardo's and aggrieved employees' rates of pay for overtime, meal and rest period premiums, and/or paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and/or 248.6(b)(3)(A).

8. CAVALLO shall provide Mr. Fajardo and all aggrieved employees employed by CAVALLO at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

9. CAVALLO shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

10. CAVALLO shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq*., including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 5-2001, section 20.

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

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

Best Regards,

J.Ron

Jezzette Ron

Copy: CAVALLO POINT LLC (via U.S. Certified Mail); CPFB TENANT, LLC (via U.S. Certified Mail); CPFB HOLDINGS, LLC (via U.S. Certified Mail); CPFB OWNER, LLC (via U.S. Certified Mail); DIAMONDROCK HOSPITALITY COMPANY (via U.S. Certified Mail); PASSPORT-FT. BAKER MANAGEMENT LLC (via U.S. Certified Mail); PASSPORT RESORTS, LLC (via U.S. Certified Mail)

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2 BETHESDA METRO
CENTER, SUITE 1400
BETHESDA, MD 20814

CPFB HOLDINGS, LLC
2 BETHESDA METRO
CENTER, SUITE 1400
BETHESDA, MD 20814

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2 BETHESDA METRO
CENTER, SUITE 1400
BETHESDA, MD 20814

CPFB OWNER, LLC
2 BETHESDA METRO
CENTER, SUITE 1400
BETHESDA, MD 20814

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SUITE 1400 BETHESDA, MD 20814

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DIAMONDROCK HOSPITALITY
COMPANY
2 BETHESDA METRO CENTER,
SUITE 1400 BETHESDA, MD 20814

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HOSPITALITY COMPANY
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MANAGEMENT LLC
475 GATE 5 ROAD, STE 225
SAUSALITO, CA 94965

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