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Attorneys for Plaintiff,  
HEIDI BIBIANO, on behalf of herself,  
all putative class members, aggrieved employees  
and the State of California as a  
Private Attorneys General

Assigned for All Purposes  
Judge Randall J. Sherman  
Dept. CX105

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE**

HEIDI BIBIANO, an individual, on behalf of  
herself, all putative class members, aggrieved  
employees, and the State of California as a  
Private Attorneys' General,

Plaintiff,

vs.

JDC FOOD SERVICES, INC., a California  
corporation; and DOES 1-50, inclusive,

Defendant.

Case No.:30-2024-01375594-CU-OE-CXC

**CLASS AND PAGA  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- 1. Failure to Pay for All Hours Worked,  
Including Overtime Hours Worked**
  - 2. Failure to Pay Wages Due Upon  
Termination**
  - 3. Failure to Provide Rest Breaks**
  - 4. Failure to Provide Uninterrupted  
Meal Breaks and Second Meal Breaks**
  - 5. Failure to Provide Business Expenses**
  - 6. Failure to Provide Cool-Down Rest  
Periods**
  - 7. Failure to Provide Accurate Itemized  
Wage Statements & Violation of  
Record Keeping Requirements**
  - 8. Unlawful Business Practices  
Bus & Prof. Code §17200**
  - 9. Private Attorneys General Act  
Penalties §2698 et seq**
- JURY TRIAL DEMANDED**

1 Plaintiff HEIDI BIBIANO, individually, and on behalf of all others similarly situated, all  
2 Aggrieved Employees, and as a Private Attorney General for the State of California (collectively  
3 “Plaintiff”), alleges as follows:

#### 4 NATURE OF THE ACTION

5 1. This is an employment class and PAGA representative action on behalf of over 100  
6 hourly, non-exempt employees against their employer for violations of numerous wage and hour  
7 laws. Plaintiff employees bring this employment class and representative action complaint on  
8 behalf of herself, and all others similarly situated against JDC FOOD SERVICES, INC. and DOES  
9 1-50, inclusive, (hereafter collectively “Defendant” or “Defendant”).

10 2. Defendant is a fast-food restaurant business where Plaintiff worked as an hourly, non-  
11 exempt employee.

12 3. As described further below, Defendant has violated the California Labor Code by (1)  
13 failing to pay for all hours worked, including overtime hours worked; (2) failing to pay wages due  
14 upon termination; (3) failing to provide rest periods; (4) failing to provide uninterrupted meal  
15 breaks and second meal breaks; (5) failing to reimburse for required business expenses; (6) failing  
16 to provide cool-down periods; (7) failing to provide suitable seating; (8) failing to provide a safe  
17 and healthful environment; (9) failing to provide accurate itemized wage statements; and (10)  
18 unlawful and unfair business practices (Bus. & Prof. Cod3 §17200, et. seq.). Plaintiff further  
19 alleges that Defendant is liable for civil penalties under the Private Attorneys General Act  
20 (“PAGA”), Labor Code §2698 et seq.

21 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)  
22 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period  
23 penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and  
24 reasonable attorneys’ fees and costs. Pursuant to the class and representative action procedures  
25 provided for under California law, Plaintiff, on behalf of themselves and proposed Class Members  
26 (also referred to as “Class”), and Aggrieved Employees, also seeks injunctive relief and restitution  
27 of all benefits Defendant has received from their unlawful actions as alleged herein. Plaintiff has  
28 also provided notice of these claims pursuant to §2698 et. seq., to the Labor and Workforce and

1 Development Agency (“LWDA”) and now brings this Complaint, including claims for civil  
2 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq. Attorney  
3 General Act (“PAGA”), Labor Code §2698 et seq.

4 5. The “Class Period” is designated as the four-year period prior to the filing of this  
5 Complaint through the date of final disposition of this action.

6 6. The “PAGA Period” commences one year prior to the date of filing the PAGA Notice  
7 letter with the LWDA.

8 7. Defendant has treated all persons employed in California in such a way as to violate  
9 California’s laws governing conditions of employment and payment of wages owed. Plaintiff  
10 asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the  
11 Class Members all wages owed, including overtime wages and meal and rest break penalty wages.  
12 Defendant has violated numerous Labor Code provisions, as set forth herein. Class Members are  
13 owed their back pay, plus interest and/or premiums and penalties under Business and Professions  
14 Code section 17203 to compensate Class Members and Class Members for the delay in receiving  
15 wages due.

16 8. Defendant, by and through their actions, has engaged in unfair competition, requiring  
17 restitution to persons affected and disgorgement of profits so obtained.

#### 18 **THE PARTIES**

19 9. Plaintiff HEIDI BIBIANO is an individual who resides in California and was employed  
20 by Defendant.

21 10. Defendant JDC FOOD SERVICES, INC. is a California corporation doing business in  
22 California with the capacity to sue and to be sued, and doing business in the county of Orange,  
23 State of California.

24 11. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true  
25 names and capacities are unknown to Plaintiff. When their true names and capacities are  
26 ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein.  
27 Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named  
28 Defendant is responsible in some manner for the occurrences herein alleged, and that the damages

1 sustained by Plaintiff, Class Members, and Aggrieved Employees herein alleged were proximately  
2 caused by such Doe Defendants.

3 12. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or  
4 indirectly, or through agents or other persons, employed Plaintiff and other members of the Class,  
5 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and  
6 believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the  
7 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects  
8 pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

### 9 **JURISDICTION AND VENUE**

10 13. Venue is proper in this judicial district because Defendant conducts business in this  
11 County and Defendant has legal obligations to Plaintiff, Aggrieved Employees, and many of the  
12 Class Members in this case that arose in this county.

13 14. The monetary damages, restitution, and statutory penalties sought by Plaintiff exceed  
14 the minimal jurisdictional limits of the Superior Court and will be established according to proof  
15 at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in  
16 controversy, including claims for monetary damages, penalties, and attorney's fees is more than  
17 twenty-five thousand dollars (\$25,000).

18 15. The California Superior Court has jurisdiction in this matter because Plaintiff is a  
19 resident of California and Defendant is incorporated in and/or qualified to do business in California  
20 and regularly conduct business in California. Further, there is no federal question at issue as the  
21 claims herein are based solely on California law.

### 22 **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

23 16. During the Class Period and PAGA Period, Defendant committed various violations of  
24 the California Labor Code, the CCR, the UCL and IWC Wage Order 5, as alleged below in more  
25 detail. Defendant enforces multiple policies that violate state law which are intended to increase  
26 its own profits to the detriment of its workers.

27 17. Defendant employed, upon information and belief, more than 100 current and former  
28 non-exempt employees (hereafter "Class Members" or "Class") during the Class Period.

1 18. Defendant failed to pay for all hours worked; timely provide and/or authorize meal  
2 breaks; timely provide and/or authorize rest breaks and cool down periods; provide suitable  
3 seating; provide a safe and healthful place of employment, pay wages due upon termination;  
4 reimburse for required business expenses and provide timely, accurate wage statements and  
5 maintain required payroll records. These practices also constitute unlawful and unfair business  
6 practices. These policies and practices have deprived Plaintiff and Class Members, and Aggrieved  
7 Employees of payment for all hours worked, and further damages, as set forth below, and render  
8 Defendant liable for damages, including penalties under PAGA.

9 19. Failure to pay for all hours worked including overtime hours worked. Defendant has  
10 been engaged in many unlawful employment practices which resulted in underpayment for hours  
11 worked each pay period, including overtime hours worked, as more fully set forth below:

12 A. Work Performed During Unpaid Meal Periods. As more fully set forth below,  
13 Defendant failed to permit Plaintiff and others to take timely, off-duty meal  
14 breaks of “not less than 30 minutes” for each five consecutive hours of work in  
15 violation of Labor Code §§226.7 and 512. Employees were frequently not given  
16 their meal break within the statutory time period required and breaks were  
17 interrupted with work duties resulting in underpaid hours worked. Defendant  
18 also failed to pay meal period penalty wages as the regular rate of pay.

19 B. Failure to Pay Wages – Required Minimum Wage. Defendant failed to pay  
20 Plaintiff and aggrieved employees for all hours worked as a result of  
21 Defendant’s practice of requiring employees to work off-the-clock. Based on  
22 Defendant’s unlawful conduct described herein, and because Plaintiff and the  
23 aggrieved employees were paid at or near minimum wage, Defendant’s failure  
24 to pay for all hours worked, including overtime, resulted in a payment of less  
25 than the minimum wage for all hours worked, in violation of Labor Code §1197,  
26 1197.1, 1199 and Wage Order 5-2001 4(B). Defendant is liable for civil  
27 penalties pursuant to Labor Code §§558 and 2699 *et seq.*  
28

1 C. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to  
2 pay Plaintiff and aggrieved employees all wages earned twice during each  
3 calendar month pursuant to Labor Code §204(a). Defendant failed to pay all  
4 wages earned to employees as a result of the unlawful employment policies and  
5 practices discussed herein. As a result of these practices, Employees were  
6 underpaid for hours worked, including overtime and penalty wages, and this  
7 underpayment resulted in a failure to pay all wages owed twice per month. Due  
8 to this failure, Defendant is liable under Labor Code §210 for failure to pay  
9 wages as required by law.

10 20. Failure to Pay Wages Due Upon Termination. An employee who is discharged must be  
11 paid all of his or her wages, including accrued vacation, immediately at the time of termination.  
12 (Labor Code Sections 201-203 and 227.3.) As set forth above, Defendant knowingly and willfully  
13 failed to pay all compensation due and owing to Plaintiff at the time employment terminated.  
14 Defendant willfully failed to pay employees who are no longer employed by it all compensation  
15 due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Plaintiff and  
16 similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time  
17 under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to Cal. Lab.  
18 Code § 2698 *et. seq.*

19 21. Rest Breaks. Defendant has failed to maintain a compliant rest period policy and  
20 practice that provides its employees with off-duty rest periods as required by California law.  
21 Through Defendant's common policies and practices rest periods were either less than ten minutes,  
22 not provided, interrupted or late, "on duty", or not scheduled before and after a meal period for  
23 shifts greater than six hours, as prescribed by California law because Defendant: (1) did not  
24 account for all hours worked that were unaccounted for on their timecard; (2) did not adequately  
25 inform and train employees about their rights to rest breaks and premium payments for non-  
26 compliant rest breaks; (3) did not adequately inform and train employees about when, where and  
27 how to take timely and uninterrupted ten-minute rest breaks; (4) because Defendant did not staff  
28 enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because

1 management at various levels, affecting all hourly, non-exempt employees, refused to offer,  
2 permit, or enforce a lawfully compliant rest break policy. Because Defendant violated Section  
3 12(A) of Wage Order 5, Defendant is liable under Labor Code §1198. Further, as a derivative  
4 claim, Plaintiff also alleges that her pay statements were inaccurate, failing to include required rest  
5 period penalties, thus failing the requirements of Labor Code §226(a). As a result of these  
6 violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et.*  
7 *seq.*

8       22. Meal periods and second meal breaks. Defendant failed to maintain a compliant meal  
9 period policy and practice. Full, uninterrupted, off-duty, thirty-minute meal periods were not  
10 provided because Defendant: (1) did not account for all hours worked that were unaccounted for  
11 on their timecard; (2) did not adequately inform and train employees about their rights to meal  
12 periods and premium payments for non-compliant meal periods; (3) did not adequately inform and  
13 train employees about when, where and how to take timely and uninterrupted thirty-minute meal  
14 periods; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted  
15 thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly,  
16 non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period  
17 policy. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not  
18 less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7  
19 and 512. Moreover, because Defendant’s policy violates a Wage Order, Defendant is liable under  
20 Labor Code §1198. As a derivative claim, Plaintiff alleges that pay statements were inaccurate,  
21 failing to include required meal period penalties, thus failing the requirements of Labor Code  
22 §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to Cal.  
23 Labor Code §558 and §2698 *et. seq.*

24       23. Failure to Reimburse for Required Business Expenses. Labor Code §2802 requires  
25 employers to indemnify employees for necessary expenditures or losses incurred by employees in  
26 direct consequence of discharge of duties. Defendant required employees to use their personal  
27 phones for work purposes and further purchase and maintain specific apparel required for work  
28

1 yet never paid for any expenses. Accordingly, Defendant is liable for civil penalties under PAGA  
2 §2699 *et seq.*

3 24. Failure to Provide Cool-Down Periods. Defendant failed to provide proper cool-down  
4 periods to employees. The kitchen area in the worksite was excessively hot and did not have proper  
5 ventilation or effective climate control given the climate issues caused by the grill and fry cook  
6 area. Temperatures would soar above 100 degrees. The only areas with proper air conditioning  
7 and ventilation are the guest areas. Employee areas are excessively hot and caused Plaintiff and  
8 aggrieved employees to suffer and sweat profusely under the conditions. Title 8 of the California  
9 Code of Regulations covers standards for indoor heat exposure. Section 3203 requires that  
10 employers take the steps necessary to protect employees' health and safety when the temperature  
11 exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with the  
12 requirements of the wage orders. Those employees who worked in the kitchen worked under  
13 extreme heat with no cooling or ventilation. Defendant did not give employees cool-down periods.  
14 Employers who fail to provide required recovery periods are liable for damages under Labor Code  
15 226.7.

16 25. Failure to Provide Suitable Seating. At all relevant times, Defendant failed to provide  
17 Plaintiff and aggrieved employees with suitable seating during their employment as required by  
18 section 14(a) and (b) of the applicable Wage Order. When Plaintiff and aggrieved employees  
19 worked at the cash register, including at the drive-thru window, they were not provided with  
20 seating despite that the job could be successfully and efficiently completed while seated. Seating  
21 was also not provided within a reasonable proximity so that employees could sit when it did not  
22 interfere with their work. Accordingly, Plaintiff, on behalf of herself and aggrieved employees,  
23 will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent  
24 allowed by law for the alleged violations.

25 26. Failure to Provide Safe Working Conditions. Defendant's workplaces would get  
26 unsafely hot in the kitchen and food prep area. Many aggrieved employees are required to work  
27 with the flames of the grill and fry area with insufficient air circulation, ventilation or cooling  
28 mechanism. Defendant does not have proper climate control. Plaintiff and her coworkers worked

1 in unbearable heat. In addition to climate control issues, Defendant failed to take safety measures  
2 required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ  
3 employee in conditions prohibited by the wage order. By violating the wage order, Defendant is  
4 liable for civil penalties pursuant to §2698 *et. seq.*

5 27. Wage statement and record keeping violations. Defendant knowingly and intentionally  
6 failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved  
7 employees in accordance with Labor Code §§ 226 and keep accurate records as required by  
8 §1174(d). The statements provided to Plaintiff and aggrieved employees, and the records  
9 maintained by Defendant, have not accurately reflected actual gross wages earned, including pay  
10 for all hours worked, and overtime. Such failures caused injury to Plaintiff and others, by, among  
11 other things, impeding them from knowing the total hours worked and the amount of wages to  
12 which they are and were entitled. Defendant knowingly and intentionally failed to itemize the gross  
13 wages earned, net wages earned, and total hours worked. Defendant is liable for civil penalties  
14 pursuant to Labor Code § 2698 *et seq.*

15 28. Unlawful business practices. Based upon the above allegations, Defendant engaged in  
16 unfair competition.

### 17 **CALIFORNIA CLASS ACTION ALLEGATIONS**

18 29. Plaintiff brings this action on behalf of herself, and all other persons similarly situated,  
19 to recover from Defendant for failure to comply with California wage and hour laws, and for claims  
20 under Business and Professions Code § 17200.

21 30. This action has been brought and may properly be maintained as a class action pursuant  
22 to the provisions of Code of Civil Procedure § 382 and/or a representative action under Business  
23 & Professions Code §§17200 *et seq.* and Labor Code §2699 because the proposed class is  
24 ascertainable and there is a well-defined community of interest. Plaintiff and Class Members are  
25 among in excess of 100 employees with like job titles, duties, and hourly wages, who have been  
26 similarly injured by Defendant's uniform, unlawful conduct.

27 31. The "Relevant Time Period" or proposed "Class Period" as defined herein commences  
28 four years prior to the date of filing this Complaint.

1           32. Plaintiff brings this action on their behalf and as a class action under Cal. Code of Civil  
2 Procedure §382 on behalf of the following defined groups:

3           Proposed Class:

4           “All persons who are employed or have been employed by Defendant in the State  
5 of California as hourly, non-exempt workers during the period of the relevant  
6 statute of limitations.”

7           Proposed Sub-classes:

8           A. All persons who are employed or have been employed by Defendant in the State  
9 of California as hourly, non-exempt workers during the period of the relevant  
10 statute of limitations, who worked one or more shift in excess of five (5) hours.

11          B. All persons who are employed or have been employed by Defendant in the State  
12 of California as hourly, non-exempt workers during the period of the relevant  
13 statute of limitations, who worked one or more shifts in excess of six (6) hours.

14          C. All persons who are employed or have been employed by Defendant in the State  
15 of California as hourly, non-exempt workers during the period of the relevant  
16 statute of limitations, who worked one or more shifts in excess of eight (8)  
17 hours.

18          D. All persons who are employed or have been employed by Defendant in the State  
19 of California as hourly, non-exempt workers during the period of the relevant  
20 statute of limitations, who worked one or more shifts in excess of three and one-  
21 half hours (3 ½), but less than or equal to six (6) hours.

22          E. All persons who are employed or have been employed by Defendant in the State  
23 of California as hourly, non-exempt workers during the period of the relevant  
24 statute of limitations, who worked one or more shifts in excess of six (6) hours,  
25 but less than or equal to ten (10) hours.

26          F. All persons who are employed or have been employed by Defendant in the State  
27 of California as hourly, non-exempt workers during the period of the relevant  
28 statute of limitations, who separated their employment from Defendant.

1 G. All persons who are employed or have been employed by Defendant in the State  
2 of California as hourly, non-exempt workers during the period of the relevant  
3 statute of limitations, who received pay for one or more pay periods.

4 33. This action is brought, and may properly be maintained, as a class action under CCP  
5 §382 because there is a well-defined community of interest in the litigation, and the proposed Class  
6 and Subclasses (collectively “Class”) are easily ascertainable.

7 A. Numerosity: The Proposed Class is so numerous that joinder of all members is  
8 impractical. Plaintiff is informed and believes, and on that basis alleges, that  
9 during the relevant time period, Defendant employed over 100 putative Class  
10 Members who are geographically dispersed and who satisfy the definition of  
11 the proposed Class. As such, a class action is the only available method for the  
12 fair and efficient adjudication of this controversy. Membership in the Proposed  
13 Class can be easily ascertained by an examination and analysis of employee and  
14 payroll records, among other records within Defendant’s possession and  
15 control.

16 B. Typicality: Plaintiff’s claims are typical of the claims of the Class Members.  
17 Plaintiff, like others similarly situated, was subjected to Defendant’s common,  
18 unlawful policies, practices, and procedures described above. The Plaintiff’s  
19 positions at the company was typical of those of other Class Members.  
20 Plaintiff’s claims are typical of the claims of each Class Member because each  
21 have sustained damages arising out of and caused by Defendant’s common  
22 course of conduct, as alleged herein. As such, Plaintiff has the same interests in  
23 this matter as all members of the Class.

24 C. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
25 members of the Class. Plaintiff has retained counsel competent and experienced  
26 in complex class actions and California labor and employment litigation.

27 D. Commonality: Common questions of law and fact exist, including but not  
28 limited to the following:

- i. Whether Defendant violated wage and hour laws by failing to pay employees for all hours worked;
- ii. Whether Defendant violated wage and hour laws by failure to always properly calculate wages and overtime for shifts;
- iii. Whether Defendant violated wage and hour laws by failing to pay due wages upon termination;
- iv. Whether Defendant violated wage and hour laws in failing to make meal breaks available;
- v. Whether Defendant violated wage and hour laws by failing to make rest periods available;
- vi. Whether Defendant violated wage and hour laws by failing to make cool-down rest periods available;
- vii. Whether Defendant failure to pay the Class Members all wages owed, including overtime, violated Business & Professions Code § 17200;
- viii. Whether Defendant failure to provide the Class Members rest periods violated Business & Professions Code § 17200;
- ix. Whether Defendant failed to provide accurate wage statements to Plaintiff and the Class as a consequence of the above listed wrongful acts;
- x. Whether Defendant failed to provide Class Members with correct final wage statements;
- xi. Whether Defendant failed to pay wages, including overtime and final wages, to terminated or quitting employees in the Class on a timely basis;
- xii. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass member;

- xiii. Whether Defendant's actions violated Business & Professions Code § 17200;
- xiv. Whether the Class Members are entitled to various penalties from Defendant including, but not limited to, waiting-time penalties under Labor Code §§ 201, 202, 203, 204, 226 and 558;
- xv. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xvi. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass member?

E. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low wage-earning employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

34. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendant's corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

1 35. Plaintiff requests, pursuant to Rule 1857(a)(1) and Rule 3.766 of the California Rules  
2 of Court, that the absent Class and Subclass Members be notified by the best notice practicable  
3 under the circumstances, including individual notice to all members who can be identified through  
4 reasonable effort. The names and addresses of the Class and Subclass Members are available from  
5 Defendant.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING OVERTIME**

8 **HOURS WORKED**

9 **Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*,**

10 **Wage Order 5**

11 **(Plaintiff Against All Defendant)**

12 36. Plaintiff reasserts and re-alleges the preceding as if fully set forth and incorporates said  
13 paragraphs herein by reference.

14 37. Section 2(K) of Wage Order 5 defines “hours worked” as “the time during which an  
15 employee is subject to the control of an including all the time the employee is suffered or permitted  
16 to work, whether or not required to do so.” When employees like Plaintiff and her coworkers  
17 earning wages at or near minimum wage do not receive payment for all hours worked, the result  
18 is that they are earning less than the statutory minimum wages for all hours worked. Defendant  
19 has been engaged in many unlawful employment practices which resulted in underpayment for  
20 hours worked each pay period.

21 38. Work Performed During Unpaid Meal Periods. As more fully set forth below,  
22 Defendant failed to permit Plaintiff and others to take timely, off-duty meal breaks of “not less  
23 than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and  
24 512. Employees were frequently not given their meal break within the statutory time period  
25 required and breaks were interrupted with work duties resulting in underpaid hours worked.  
26 Defendant also failed to pay meal period penalty wages as the regular rate of pay.

27 39. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff and  
28 Class Members for all hours worked as a result of Defendant’s practice of requiring employees to

1 work off-the-clock. Based on Defendant's unlawful conduct described herein, and because  
2 Plaintiff and the Class Members were paid at or near minimum wage, Defendant's failure to pay  
3 for all hours worked, including overtime, resulted in a payment of less than the minimum wage for  
4 all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B).  
5 Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

6 40. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay  
7 Plaintiff and Class Members all wages earned twice during each calendar month pursuant to Labor  
8 Code §204(a). Defendant failed to pay all wages earned to employees as a result of the unlawful  
9 employment policies and practices discussed herein. As a result of these practices, Employees  
10 were underpaid for hours worked, including overtime and penalty wages, and this underpayment  
11 resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendant is liable  
12 under Labor Code §210 for failure to pay wages as required by law. Defendant is liable for all  
13 unpaid wages, interest, and civil penalties pursuant to Cal. Lab. Code §§558 and 2698 *et. seq.*

## 14 **SECOND CAUSE OF ACTION**

### 15 **FAILURE TO PAY WAGES DUE UPON TERMINATION**

16 **Cal. Lab. Code §§201, 202, 203, 256**

17 **(Plaintiff Against All Defendant)**

18 41. Plaintiff incorporates by reference in this cause of action each allegation of the  
19 preceding paragraphs as though fully set forth herein.

20 42. An employee who is discharged must be paid all of his or her wages, including accrued  
21 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set  
22 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to  
23 Plaintiff at the time employment terminated. Defendant willfully failed to pay employees who are  
24 no longer employed by it all compensation due upon termination of employment as required by  
25 Cal. Lab. Code §§201 and 202. Plaintiff and similarly situated individuals are now entitled to  
26 recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Defendant  
27 is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*  
28

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST BREAKS**

3 **Cal. Labor Code §§226, 226.7, 512, 558, 1198**

4 **(Plaintiff Against All Defendant)**

5 43. Plaintiff incorporates by reference in this cause of action each allegation of the  
6 preceding paragraphs as though fully set forth herein.

7 44. Defendant has failed to maintain a compliant rest period policy and practice that  
8 provides its employees with off-duty rest periods as required by California law. Defendant did not  
9 authorize or permit all of its hourly employees to take at least a ten minute rest period in which  
10 they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required  
11 by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 12(A). According to Plaintiff, she almost  
12 never received rest breaks, and this experience is consistent with that of other a Class Members.

13 45. The claims made on behalf of Plaintiff are also based on the following common facts  
14 and theories: through Defendant's common policies and practices rest periods were either less than  
15 ten minutes, not provided, interrupted or late, "on duty", or not scheduled before and after a meal  
16 period for shifts greater than six hours, as prescribed by California law because Defendant: (1) did  
17 not account for all hours worked that were unaccounted for on their timecard; (2) did not  
18 adequately inform and train employees about their rights to rest breaks and premium payments for  
19 non-compliant rest breaks; (3) did not adequately inform and train employees about when, where  
20 and how to take timely and uninterrupted ten-minute rest breaks; (4) because Defendant did not  
21 staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5)  
22 because management at various levels, affecting all hourly, non-exempt employees, refused to  
23 offer, permit, or enforce a lawfully compliant rest break policy.

24 46. Because Defendant violated Section 12(A) of Wage Order 5, Defendant is liable under  
25 Labor Code §1198. Further, as a derivative claim, Plaintiff also alleges that her pay statements  
26 were inaccurate, failing to include required rest period penalties, thus failing the requirements of  
27 Labor Code §226(a). As a result of these violations, Defendant is liable for unpaid penalty  
28 payments, interest, and civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE UNINTERRUPTED MEAL BREAKS & SECOND**  
3 **MEAL BREAKS**

4 **Cal. Labor Code §§226, 226.7, 512, 558, 1198**

5 **(Plaintiff Against All Defendant)**

6 47. Plaintiff incorporates by reference in this cause of action each allegation of the  
7 preceding paragraphs as though fully set forth herein.

8 48. During Plaintiff's employment, Defendant failed to maintain a compliant meal period  
9 policy and practice. Defendant failed to provide all of its hourly employees with their right to take  
10 an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not  
11 employ an employee for a work period of more than five hours per day without providing the  
12 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o  
13 employer shall require an employee to work during any meal... period mandated by an applicable  
14 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in  
15 pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the  
16 meal period shall be considered an 'on duty' meal period and counted as time worked."

17 49. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because  
18 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;  
19 (2) did not adequately inform and train employees about their rights to meal periods and premium  
20 payments for non-compliant meal periods; (3) did not adequately inform and train employees about  
21 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because  
22 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal  
23 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt  
24 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.

25 50. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of  
26 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code  
27 §§226.7 and 512. Moreover, because Defendant's policy violates a Wage Order, Defendant is  
28 liable under Labor Code §1198. As a derivative claim, Plaintiff alleges that pay statements were

1 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor  
2 Code §226(a). As a result of these violations, Defendant is liable for unpaid penalty payments,  
3 interest, and civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq*

4 **FIFTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES**

6 **Cal. Labor Code §§ 1198, 2802**

7 **(Plaintiff Against All Defendant)**

8 51. Plaintiff incorporates by reference in this cause of action each allegation of the  
9 preceding paragraphs as though fully set forth herein.

10 52. Labor Code §2802 requires employers to indemnify employees for necessary  
11 expenditures or losses incurred by employees in direct consequence of discharge of duties.  
12 Defendant required employees to use their personal phones for work purposes and further purchase  
13 and maintain specific apparel required for work yet never paid for any expenses.

14 53. As a result of Defendant's failure to reimburse for required business expenses,  
15 Defendant is liable for unreimbursed expenses, interest, and civil penalties pursuant to Cal. Labor  
16 Code §2698 *et seq*.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE COOL-DOWN REST PERIODS**

19 **Cal. Labor Code §§ 226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 5**

20 **(Plaintiff Against All Defendant)**

21 54. Plaintiff incorporates by reference in this cause of action each allegation of the  
22 preceding paragraphs as though fully set forth herein.

23 55. Section 15 of Wage Order 5 provides that:

24 A. The temperature maintained in each work area shall provide reasonable comfort  
25 consistent with industry-wide standards for the nature of the process and the  
26 work performed.  
27  
28

1 B. If excessive heat or humidity is created by the work process, the employer shall  
2 take all feasible means to reduce such excessive heat or humidity to a degree  
3 providing reasonable comfort.

4 56. The kitchen area in the worksite was excessively hot and did not have proper ventilation  
5 or effective climate control given the climate issues caused by the grill and fry cook area.  
6 Temperatures would soar above 100 degrees. The only areas with proper air conditioning and  
7 ventilation are the guest areas. Employee areas are excessively hot and caused Plaintiff and Class  
8 Members to suffer and sweat profusely under the conditions.

9 57. Title 8 of the California Code of Regulations cover standards for indoor heat exposure.  
10 Section 3203 requires that employers take the steps necessary to protect employees' health and  
11 safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that  
12 breaks comply with requirements of the wage orders.

13 58. Those employees who worked in the kitchen worked under extreme heat with no  
14 cooling or ventilation. Defendant did not give employees cool-down periods. Employers who fail  
15 to provide required recovery periods are liable for damages under Labor Code 226.7. As a result  
16 of these violations, Defendant is liable for unpaid penalty payments, interest, and civil penalties  
17 pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

18 **SEVENTH CAUSE OF ACTION**

19 **PAYSTUB AND RECORD KEEPING VIOLATION**

20 **Cal. Labor Code §§ 226, 1174(d)**

21 **(Plaintiff Against All Defendant)**

22 59. Plaintiff incorporates by reference in this cause of action each allegation of the  
23 preceding paragraphs as though fully set forth herein.

24 60. Defendant knowingly and intentionally failed to provide timely, accurate, itemized  
25 wage statements to Plaintiff and the Class Members in accordance with Labor Code §§ 226 and  
26 keep accurate records as required by §1174(d). The statements provided to Plaintiff and Class  
27 Members, and the records maintained by Defendant, have not accurately reflected actual gross  
28 wages earned, including pay for all hours worked, and overtime.

61. Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Defendant knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Defendant is liable for damages and civil penalties pursuant to Labor Code §§ 226, 1174, and 2698 *et seq.*

## EIGHTH CAUSE OF ACTION

## UNFAIR PRACTICE UNDER THE UNFAIR COMPETITION ACT (“UCL”)

**AGAINST ALL DEFENDANT**

**(Plaintiff Against All Defendant)**

62. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

63. Defendant knowingly committed, and upon information and belief continues to commit, ongoing unlawful business practices within the meaning of the UCL, including, but not limited to unlawful practices as described in the causes of action articulated above, and hereby incorporated herein.

64. Plaintiff lost money and property as a result of Defendant's unlawful business practices described above.

65. Pursuant to the UCL, Plaintiff, all Class Members, and Aggrieved Employees are entitled to restitution of money or property acquired by Defendant by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

66. Pursuant to the UCL, Plaintiff, Class Members, and Aggrieved Employees are entitled to injunctive relief against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining Defendant from engaging in the unlawful business practices described above, Plaintiff and the general public will be irreparably injured.

67. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of Plaintiff, Class Members, Aggrieved Employees and of the general public.

68. Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the general public.

69. Defendant's numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code § 17200, et seq.

70. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff, Class Members and Aggrieved Employees are entitled to restitution of unpaid wages and penalty pay, among other relief alleged herein, that were withheld and retained by Defendant during a period that commences four years prior to the filing of this action. Plaintiff, Class Members and aggrieved employees are further entitled to a permanent injunction requiring Defendant to comply with all provisions of California labor law, including properly paying the lawful rate of pay for all hours worked, providing meal/rest periods to all workers as defined herein, timely pay wages upon discharge, maintain accurate wages statements and payroll records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other applicable law, and costs.

## NINTH CAUSE OF ACTION

## STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS

**GENERAL ACT, LABOR CODE §2698 et seq.**

**(Plaintiff Against All Defendant)**

71. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

72. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an aggrieved employee, on behalf of herself and other current or former employees, may recover penalties under any provision of the Labor Code that provides for civil penalties. These penalties are in addition to any other relief available under the Labor Code. Plaintiff is an aggrieved employee under PAGA.

73. As set forth above, Defendant has committed numerous violations for which the Labor Code provides for penalties, including violations of all applicable Labor Code provisions set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned Labor Code

provisions as statutes to which §2699.3's procedural requirements must be met before a penalty may be assessed under §2699(f). Plaintiff has complied with the procedural requirements specified in §2699.3 by providing written notice to the Defendant and the Labor & Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and correct copy of the Notice correspondence showing compliance with §2699.3. No notice of intent to investigate the alleged violations was provided within the statutory period. Consequently, Plaintiff has exhausted administrative remedies, and on behalf of themselves and all other aggrieved current and former employees of Defendant. Plaintiff, therefore, now pursues this cause of action as permitted by §2698, *et seq.*

74. Enforcement of statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public interest in California. Consequently, Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated herein is necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be against the interests of justice to require payment of attorneys' fees and costs from any recover that might be obtained herein, pursuant to, *inter alia*, Labor Code §§2698, *et seq.*, and Code of Civil Procedure §1021.5

75. In addition, if Plaintiff succeeds in enforcing these rights affecting the public interest, then attorneys' fees may be awarded to Plaintiff and against Defendant under Code of Civil Procedure §1021.5 and other applicable law in part, because:

- A. A successful outcome in this action will result in the enforcement of important rights affecting the public interest by requiring Defendant to comply with the wage and hour laws and California's unfair business practice law;
- B. This action will result in a significant benefit to Plaintiff, the Class, and the general public by bringing to a halt unlawful and/or unfair activity;
- C. Unless this action is prosecuted, members of the Class and general public will not recover those moneys, and many of Defendant's employees would not be

1           aware that the acts and practices they were subjected to by Defendant was  
2           wrongful;

3           D. Unless this action is prosecuted, Defendant will continue to mislead their  
4           employees about the true nature of their rights and remedies under the wage and  
5           hour laws; and

6           E. An award of attorneys' fees and costs is necessary for the prosecution of this  
7           action and will result in a benefit to Plaintiff, the Class, Aggrieved Employees,  
8           and to consumers in general, by preventing Defendant from continuing to  
9           circumvent the wage and hour statutes and frustrate the long-standing  
10          recognition by the California legislature and the courts that such statutes, as  
11          pled herein, are not merely a matter of private concern between employer and  
12          employee to be eviscerated by considerations of waiver, contributory  
13          negligence, good or bad faith, and private agreements. Rather, the wage and  
14          hour statutes have been described as a matter of public concern, were designed  
15          to provide minimum substantive guarantees to individual workers and are  
16          essential to public welfare.

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1  
2 **REQUEST FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment as follows:

4 That Plaintiff, Class Members, and Aggrieved Employees receive an award in the amount  
5 of unpaid wages owed, including interest thereon, and penalties as follows:

6 **For Causes of Action 1-8:**

- 7 1. That the Court determine that this action may be maintained as a class action under Code of  
8 Civil Procedure § 382;
- 9 2. Provision of class notice to all members of the Class;
- 10 3. That Defendant is found to have violated the above-referenced provisions of the Labor  
11 Code, CCR and IWC Wage Order 5-2001 as to Plaintiff, Class Members and Aggrieved  
12 Employees;

13 **For the First Cause of Action- Failure to Pay For All Hours Worked Including Overtime Hours**  
14 **Worked:**

- 15 1. For compensatory damages according to proof at trial;
- 16 2. For prejudgment interest, at the legal rate;
- 17 3. For penalties pursuant to Labor Code §§ 218, 510, 558, 1194, 1197, 1197.1, 1198;
- 18 4. For attorneys' fees;
- 19 5. For costs of suit incurred herein; and
- 20 6. For such other and further relief as the Court may deem appropriate.

21  
22 **For the Second Cause of Action- Failure to Pay Wages Due Upon Termination:**

- 23 1. For compensatory damages according to proof at trial;
- 24 2. For additional wages pursuant to Labor Code § 201, 202, 203, 204;
- 25 3. For penalties pursuant to Labor Code §§ 203 and 558;
- 26 4. For attorneys' fees;
- 27 5. For costs of suit incurred;
- 28 6. For prejudgment interest; and

7. For such other and further relief as the Court deems proper.

For the Third Cause of Action- Failure to Provide Rest Breaks:

1. For compensatory damages according to proof at trial;
2. For additional wages pursuant to Labor Code § 512, 226.7;
3. For penalties pursuant to Labor Code § 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Fourth Cause of Action- Failure to Provide Timely Meal Breaks & Second Meal Breaks:

1. For compensatory damages according to proof at trial;
2. For additional wages pursuant to Labor Code § 512, 226.7;
3. For penalties pursuant to Labor Code §§ 203 and 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Fifth Cause of Action- Failure to Reimburse for Required Business Expenses:

1. For compensatory damages according to proof at trial;
2. For additional wages pursuant to Labor Code § 2802;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Sixth Cause of Action- Failure to Provide Cool-down Rest Periods

1. For compensatory damages according to proof at trial;
2. For additional wages pursuant to Labor Code § 226 (a), 226.7, 512, 558, 1198,
3. For penalties pursuant to Labor Code §§ 558;
4. For attorneys' fees;
5. For costs of suit incurred;
6. For prejudgment interest; and
7. For such other and further relief as the Court deems proper.

For the Seventh Cause of Action- Inaccurate Payroll Records:

1. For compensatory damages according to proof at trial;
2. For penalties pursuant to Labor Code §§ 226 and 1174;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Eighth Cause of Action- Unfair Business Practices:

1. For a preliminary and permanent injunction requiring Defendant to (1) pay all owed wages; (2) adopt a lawful timekeeping practice; (3) provide meal and rest periods; (4) provide safe working conditions; and (5) provide and maintain appropriate payroll records;
2. For compensatory damages according to proof at trial;
3. For attorneys' fees;
4. For costs of suit incurred;
5. For prejudgment interest; and
6. For such other and further relief as the Court deems proper.

For the Ninth Cause of Action- PAGA

1. For penalties pursuant to the Private Attorneys General Act, Labor Code §2698 et seq.
2. For attorneys' fees;
3. For costs of suit incurred;
4. For such other and further relief as the Court deems proper.

DATED: January 23, 2024

KOUL LAW FIRM



BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff HEIDI BIBIANO and  
putative class members

***DEMAND FOR JURY TRIAL***

Plaintiff, on behalf of herself and the putative class, hereby demands trial by jury to the full extent permitted by law.

DATED: January 23, 2024

KOUL LAW FIRM



BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff HEIDI BIBIANO and  
putative class members

# EXHIBIT A



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

November 3, 2023

**Via E-filing:**

California Labor & Workforce  
Development Agency  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102

**Via Certified U.S. Mail:**

JDC Food Services, Inc.  
35151 Camino Capistrano  
Capistrano Beach, CA 92624

Re: PAGA Notice Pursuant to California Labor Code §2699  
Claimant: Heidi Bibiano  
Employer: JDC Food Services, Inc.

Dear Sir or Madam:

Claimant Heidi Bibiano has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, JDC Food Services, Inc. (“Employer”).

Employer is a fast-food restaurant business. Claimant’s proposed PAGA representative action would represent numerous non-exempt, hourly aggrieved employees who worked in Employer’s restaurants. Claimant was an employee of Employer during the statutory period.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

## **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*,

Wage Order 5)

Section 2(K) of Wage Order 5 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

### **Work Performed During Unpaid Meal Periods**

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees were frequently not given their meal break within the statutory time period required and breaks were interrupted with work duties resulting in underpaid hours worked. Employer also failed to pay meal period penalty wages as the regular rate of pay.

### **Failure to Pay Wages- Required Minimum Wage**

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practice of requiring employees to work off-the-clock. Based on Employer’s unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 5-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

### **Failure to Pay All Wages Owed Twice Per Month**

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

### **Failure to Pay Wages Due Upon Termination**

#### **(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)**

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

### **Failure to Provide Rest Breaks**

#### **Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.***

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 5-2001 12(A). According to Claimant, she almost never received rest breaks, and this experience is consistent with that of other aggrieved employees.

The claims made on behalf of Claimant are also based on the following common facts and theories: Through Employer's common policies and practices rest periods were either less than ten minutes, not provided, interrupted or late, "on duty", or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Because Employer violated Section 12(A) of Wage Order 5, Employer is liable under Labor Code §1198. Further, as a derivative claim, Claimant also alleges that her pay

statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

**Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks**

**Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.***

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Moreover, because Employer's policy violates a Wage Order, Employer is liable under Labor Code §1198. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

### **Failure to Reimburse For Required Business Expenses**

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Employer required employees to use their personal phones for work purposes and further purchase and maintain specific apparel required for work yet never paid for any expenses. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et eq.*

### **Failure to Provide Cool-Down Periods**

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 5)

Section 15 of Wage Order 5 provides that:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

The kitchen area in the worksite was excessively hot and did not have proper ventilation or effective climate control given the climate issues caused by the grill and fry cook area. Temperatures would soar above 100 degrees. The only areas with proper air conditioning and ventilation are the guest areas. Employee areas are excessively hot and caused Claimant and aggrieved employees to suffer and sweat profusely under the conditions.

Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees' health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with requirements of the wage orders.

Those employees who worked in the kitchen worked under extreme heat with no cooling or ventilation. Employer did not give employees cool-down periods. Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

### **Failure To Provide Suitable Seating**

#### **(Lab. Code section 1198 and Wage Order 5 Section 14)**

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of Wage Order 5 provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. When Claimant and aggrieved employees worked at the cash register, including at the drive-thru window, they were not provided with seating despite that the job could be successfully and efficiently completed while seated. Accordingly, Claimant, on behalf of herself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

### **Failure to Provide Safe Working Conditions**

#### **(Cal. Labor Code §1198, Wage Order 5)**

Employer’s workplaces would get unsafely hot in the kitchen and food prep area. Many aggrieved employees are required to work with the flames of the grill and fry area with insufficient air circulation, ventilation or cooling mechanism. Employer does not have proper climate control. Claimant and her coworkers worked in unbearable heat.

As stated above, Section 15 of Wage Order 5 provides that:

- (A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

**Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements**

(Cal. Labor Code §§ 226, 1174(d), 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

**Conclusion**

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,



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Attorney for Claimant