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

BRIAN HERNANDEZ, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

BUCA RESTAURANTS 2, INC., a
Minnesota corporation; EARL
ENTERPRISES CORPORATE, LLC, a
Florida limited liability company; EARL
ENTERPRISES HOLDINGS, INC. a
Florida corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: **24STCV05913**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiff Brian Hernandez, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on January 2, 2024, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

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

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

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

9 **THE PARTIES**

10 6. Plaintiff Brian Hernandez is a resident of North Hollywood, in Los Angeles
11 County, California. Defendants have employed Plaintiff as an hourly paid, non-exempt
12 Busser/Runner from approximately July 2021 through December 2022, and then from
13 February 2023 to present at their Buca di Beppo locations in Universal City and Pasadena,
14 California. Plaintiff typically works six (6) or more hours per day and six (6) or more days
15 per week. Plaintiff earns approximately \$16.50 per hour. His job duties include, without
16 limitation, taking customer orders, serving food to customers, and setting up and clearing
17 tables.

18 7. On information and belief, Defendants required some employees, including
19 Plaintiff, to execute an arbitration agreement at the time of hire or during their employment.
20 On further information and belief, Defendants’ arbitration agreement was and is both
21 procedurally and substantively unconscionable. Specifically, Defendants presented employees
22 with a Mutual Arbitration Agreement (“Arbitration Agreement”) during the onboarding
23 process, which had to be reviewed and acknowledged immediately. Specifically, the
24 Arbitration Agreement was one of several documents presented to new employees for
25 signature during the orientation process, including a California Meal and Rest Period Waiver
26 and Acknowledgement Form; Confidentiality, Non-Solicitation, and Work for Hire
27 Agreement; Harassment and Discrimination Policy; Handbook Acknowledgement Receipt;
28 and Uniform Responsibility Policy, among other documents. Also, employees did not have a

1 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
2 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with
3 all of the other on-boarding documents.

4 8. BUCA RESTAURANTS 2, INC. was and is, upon information and belief, a
5 Minnesota corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county and the State of California.

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

10 10. EARL ENTERPRISES HOLDINGS, INC. was and is, upon information and
11 belief, a Florida corporation, and at all times hereinafter mentioned, an employer whose
12 employees are engaged throughout this county and the State of California.

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

17 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
18 were the partners, agents, owners, or managers of BUCA RESTAURANTS 2, INC.; EARL
19 ENTERPRISES CORPORATE, LLC; and EARL ENTERPRISES HOLDINGS, INC. at all
20 relevant times.

21 13. Plaintiff is informed and believes, and thereon alleges, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, BUCA
23 RESTAURANTS 2, INC.; EARL ENTERPRISES CORPORATE, LLC; EARL
24 ENTERPRISES HOLDINGS, INC.; and/or DOES 1 through 10 (collectively, "Defendants" or
25 "BUCA"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
26 in concert with, each of the other co-Defendants and was acting within the course and scope of
27 such agency, employment, joint venture, or concerted activity with legal authority to act on
28 the others' behalf. The acts of any and all Defendants were in accordance with, and represent,

1 the official policy of Defendants.

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

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

9 16. Under California law, Defendants are jointly and severally liable as employers
10 for the violations alleged herein because they have each exercised sufficient control over the
11 wages, hours, working conditions, and employment status of Plaintiff and other non-party
12 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
13 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
14 of employment, determined their rate of pay, and maintained their employment records.
15 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
16 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
17 common-law employment relationship. As joint employers of Plaintiff and other non-party
18 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
19 available to Plaintiff and other non-party Aggrieved Employees under the law.

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

- 23 (a) jointly exercised meaningful control over the work performed by
24 Plaintiff and other non-party Aggrieved Employees;
25 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
26 Aggrieved Employees’ wages, hours, and working conditions, including
27 the quantity, quality standards, speed, scheduling, and operative details
28 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.

18. 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.

19. BUCA RESTAURANTS 2, INC.; EARL ENTERPRISES CORPORATE, LLC; EARL ENTERPRISES HOLDINGS, INC.; and DOES 1 through 10 are therefore alter egos of each other.

20. 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 BUCA.

21. Plaintiff further alleges, upon information and belief, that Defendants BUCA RESTAURANTS 2, INC.; EARL ENTERPRISES CORPORATE, LLC; and EARL ENTERPRISES HOLDINGS, INC. are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/>), BUCA RESTAURANTS 2, INC. and EARL ENTERPRISES CORPORATE, LLC, and on the Florida Secretary of State's website (<https://dos.fl.gov/sunbiz/search/>), EARL ENTERPRISES HOLDINGS, INC. share the same principal and

mailing address, “4700 MILLENIA BLVD., SUITE 400, ORLANDO, FL 32839”;

- (b) According to information filed with the California Secretary of State and Florida Secretary of State, BUCA RESTAURANTS 2, INC.; EARL ENTERPRISES CORPORATE, LLC; and EARL ENTERPRISES HOLDINGS, INC. share the same officer/director and/or manager/member, including Thomas Avallone;
- (c) On information and belief, BUCA RESTAURANTS 2, INC. and EARL ENTERPRISES CORPORATE, LLC share the same agent for service of process, “1505 CORPORATION;” and
- (d) On information and belief, BUCA RESTAURANTS 2, INC.; EARL ENTERPRISES CORPORATE, LLC; and EARL ENTERPRISES HOLDINGS, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants own and operate 16 Buca di Beppo restaurant locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Orlando, Florida, which is responsible for 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.

23. 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.

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

10 25. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

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

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

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

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

1 regular rate of pay for other non-party Aggrieved Employees.

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

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

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
19 payment of one (1) additional hour of pay at their regular rates of pay when they were not
20 authorized and permitted to take a compliant rest period. In violation of the California Labor
21 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
22 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
23 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
24 pay when they were not authorized and permitted to take a compliant rest period.

25 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive complete and accurate wage statements in accordance with California law. In
28 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees

1 were not provided complete and accurate wage statements.

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

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

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

19 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive their full wages due without having to execute a release of claims. In violation of the
22 California Labor Code, Defendants required Plaintiff and other non-party Aggrieved
23 Employees to release their claims for unpaid wages as a condition to receiving their
24 paychecks.

25 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 the portion of wages previously paid and subsequently unlawfully deducted by Defendants.

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

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 payment of wages as designated by statute. In violation of the California Labor Code,
3 Defendants secretly paid Plaintiff and other non-party Aggrieved Employees lower wages
4 than required by statute while purporting to pay them proper wages.

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

10 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that other non-party Aggrieved Employees were entitled to receive sick
12 leave benefits to be paid at a regular rate of pay, that included, as eligible income, all income
13 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
14 violation of the California Labor Code, Defendants failed to include all forms of remuneration
15 in calculating the regular rate of pay for sick leave pay.

16 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that other non-party Aggrieved Employees were entitled to one day's rest
18 in seven. In violation of the California Labor Code, Defendants required other non-party
19 Aggrieved Employees to work more than six consecutive days without a day of rest, where the
20 total hours worked exceeded 30 hours in any week or six hours in any one day thereof.

21 43. Plaintiff are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 suitable resting facilities to cease work and recover during meal or rest periods, but failed to
24 provide suitable resting facilities.

25 44. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that other non-party Aggrieved Employees were entitled to suitable
27 seating and/or were entitled to sit when it did not interfere with the performance of their duties
28 and also have seats nearby to use during a lull in tasks that do require moving about or

standing. In violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to provide other non-party Aggrieved Employees suitable seating.

45. 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 reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of the usual or scheduled shift. In violation of the California Labor Code and applicable IWC Wage Order, Defendants did not pay other non-party Aggrieved Employees all reporting time pay due.

46. 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 reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment and that they did not receive reimbursement of applicable business-related expenses and costs incurred.

47. 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.

48. 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.

49. 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."

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

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

- 7 (a) The aggrieved employee shall give written notice by online filing
8 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
9 to the employer of the specific provisions of the California Labor Code
10 alleged to have been violated, including the facts and theories to support
11 the alleged violations.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
16 employer and the aggrieved employee by certified mail that it does not
17 intend to investigate the alleged violation within sixty (60) calendar
18 days of the postmark date of the Employee’s Notice. Upon receipt of
19 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
20 five (65) calendar days of the postmark date of the Employee’s Notice,
21 the aggrieved employee may commence a civil action pursuant to
22 California Labor Code section 2699 to recover civil penalties in addition
23 to any other penalties to which the employee may be entitled.

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

- 28 (a) The aggrieved employee or representative shall give written notice by

1 online filing to the LWDA and by certified mail to the employer of the
2 specific provisions of the California Labor Code alleged to have been
3 violated (other than those listed in Section 2699.5), including the facts
4 and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be
7 accompanied by a filing fee of seventy-five dollars (\$75).

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

16 53. On January 2, 2024, Plaintiff provided written notice by online filing to the
17 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
21 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
22 Plaintiff PAGA Case Number LWDA-CM-1002666-24. A true and correct copy of Plaintiff's
23 written notice to the LWDA and Defendants dated January 2, 2024, is attached hereto as
24 "Exhibit 1."

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

28 55. Thus, Plaintiff has satisfied the administrative prerequisites under California

1 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
2 violations of California Labor Code sections 201, 202, 204, 206.5, 221, 223, 224, 226(a),
3 226.7, 227.3, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

4 56. Labor Code section 558(a) provides “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare
7 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
11 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
12 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
13 as a private attorney general, seeks assessment and collection of civil penalties under Labor
14 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
15 California against Defendants for violations of Labor Code sections 510, 512(a), 516, and
16 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as private
17 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
18 from Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
19 applicable IWC Wage Order.

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

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

27 59. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
28 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, 206.5, 221, 223, 224, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

61. California Labor Code §§ 2698, *et seq.* (“PAGA”) permit 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, 206.5, 221, 223, 224, 226(a), 226.7, 227.3, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. 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, 516, and 1182.12.

62. 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 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, as set forth below;
- (b) 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;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and

1 the applicable IWC Wage Order for Defendants' failure to compensate
2 Plaintiff and other non-party Aggrieved Employees with at least
3 minimum wages for all hours worked, as set forth below;

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

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

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

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

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

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

23 (j) Violation of Labor Code section 206.5 for requiring Plaintiff and other
24 non-party Aggrieved Employees to execute a release of claims as a
25 condition to receiving wages due to them, as set forth below;

26 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting
27 a portion of wages previously paid to Plaintiff and/or other non-party
28 Aggrieved Employees, as set forth below;

- (l) Violation of Labor Code section 223 for secretly paying Plaintiff and/or other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (a) Violation of Labor Code section 227.3 for failure to pay other non-party Aggrieved Employees all vested vacation time upon termination, as alleged herein;
- (b) Violation of Labor Code sections 246 for failure to properly calculate the sick leave rate paid to other non-party Aggrieved Employees, as set forth below;
- (m) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to other non-party Aggrieved Employees, as set forth below;
- (n) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (o) Violation of Labor Code section 1198 for failing to provide suitable seating to other non-party Aggrieved Employees, as set forth below;
- (c) Violation of Labor Code sections section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their usual or scheduled shifts, as set forth below; and
- (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

63. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code

1 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
2 be the . . . standard conditions of labor for employees. The employment of any employee . . .
3 under conditions of labor prohibited by the order is unlawful.”

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

8 65. Specifically, the applicable IWC Wage Order provides that Defendants are and
9 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
10 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
11 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
12 (40) hours in a workweek.

13 66. The applicable IWC Wage Order further provides that Defendants are and were
14 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
15 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
16 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
17 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

18 67. California Labor Code section 510 codifies the right to overtime compensation
19 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
20 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
21 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
22 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
23 in a day on the seventh (7th) day of work.

24 68. During the relevant time period, Defendants willfully failed to pay all overtime
25 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
26 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
27 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
28 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were

1 not recorded.

2 69. First, during the relevant time period, Defendants had, and continue to have, a
3 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
4 Employees to perform tasks while off-the-clock before or after their scheduled shifts. For
5 example, prior to starting his shift, Defendants has required Plaintiff to attend to customers
6 and clean tables. As a further example, Defendants' management would call other non-party
7 Aggrieved Employees while they were off-the-clock to discuss work-related matters.

8 70. Additionally, because Defendants' timekeeping system was integrated with the
9 company's point-of-sale ("POS") system, Plaintiff and other non-party Aggrieved Employees
10 would often have to wait to clock in for the start of their shifts, because other employees were
11 using the POS system to handle customer sales transactions. For instance, Plaintiff would be
12 required to wait approximately 10 minutes under Defendants' control until a POS machine
13 was available for clocking-in, time for which he was not paid. Moreover, Defendants'
14 timekeeping system prevented employees from clocking in too early before their scheduled
15 shifts, prohibiting them from recording time worked prior to the start of their scheduled shifts.
16 Consequently, on information and belief, Plaintiff and other non-party Aggrieved Employees
17 have performed work prior to the start of their shifts, but were be unable to record this time.
18 For example, Plaintiff sometimes would be called in to report to work earlier than his usual
19 shift start time, but was required to wait approximately 10 minutes each time for a manager to
20 authorize him to clock in earlier, because the timekeeping system did not allow him to clock
21 in prior to his scheduled shift start time.

22 71. Second, Defendants had, and continue to have, a company-wide policy and/or
23 practice of strictly staffing their locations based on the labor hours allocated by each
24 location's labor or payroll budget set by the corporate office. On information and belief,
25 Defendants' uniform use of labor budgeting and understaffing resulted in a failure to provide
26 Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage,
27 because there were too few employees on duty to handle the workload and attend to guests.
28 Because Defendants did not employ or staff a sufficient number of employees to meet guest

1 demand, there was no one available to relieve employees needing meal period coverage, and
2 Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted
3 30-minute meal periods during shifts when they were entitled to receive a meal period.
4 Defendants also had a practice of failing to schedule meal periods, which further caused
5 Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for
6 compliant meal periods. For example, Plaintiff has worked through all or part of his meal
7 periods to keep up with the demands of work. Thus, Plaintiff and other non-party Aggrieved
8 Employees would be required to work through and/or had their unpaid meal periods
9 interrupted in order to complete their assigned duties, time for which they were not paid.

10 72. Defendants knew or should have known that as a result of these company-wide
11 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were working
12 before and after their shifts and during their meal periods, and were suffered or permitted to
13 perform work for which they were not paid. Because Plaintiff and other non-party Aggrieved
14 Employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more,
15 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and
16 other non-party Aggrieved Employees were not paid overtime wages for all of the overtime
17 hours they actually worked.

18 73. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
19 correct overtime rate for the recorded overtime hours that they generated. In addition to an
20 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
21 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
22 California Labor Code, Defendants failed to incorporate all compensation, including incentive
23 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
24 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
25 times when other non-party Aggrieved Employees worked overtime and received these other
26 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
27 than required.

28 74. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees

1 the balance of overtime compensation as required by California law, violates the provisions of
2 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
3 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
4 558 and/or 2699(a), (f), and (g).

5 **FAILURE TO PAY MINIMUM WAGES**

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

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

14 76. As stated above, Defendants had, and continue to have, a company-wide policy
15 and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to perform
16 work while off-the-clock, including attending to customers, cleaning tables, responding to
17 phone calls from management regarding work-related matters, and waiting to clock in.
18 Additionally, as stated above, due to Defendants’ implementation of a timekeeping system
19 that prevented employees from clocking in until their scheduled shifts, Plaintiff and other non-
20 party Aggrieved Employees would be prevented from recording time worked prior to the start
21 of their scheduled shifts. Thus, Defendants have failed to track this time Plaintiff and other
22 non-party Aggrieved Employees spent working off-the-clock, and Plaintiff and other non-
23 party Aggrieved Employees have received no compensation for this time.

24 77. Furthermore, as set forth above, due to Defendants’ uniform practices of
25 utilizing labor budgets, understaffing their locations, assigning heavy workloads, and failing
26 to schedule meal periods, Plaintiff and other non-party Aggrieved Employees have been
27 impeded from taking all uninterrupted meal periods to which they were entitled and were
28 required to work off-the-clock during meal periods. As a result, Plaintiff and other non-party

1 Aggrieved Employees were not relieved of all duties during unpaid meal periods and were
2 required to work off-the-clock, time for which they were not paid.

3 78. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
4 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
5 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
6 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
7 1194, 1197, and 1198.

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

12 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
13 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

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

24 82. At all relevant times herein set forth, California Labor Code sections 226.7,
25 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
26 meal period mandated by an applicable order of the IWC.

27 83. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
28 1198, and the applicable IWC Wage Order also require employers to provide a second meal

1 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
2 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
3 the total hours worked is no more than twelve (12) hours, the second meal period may be
4 waived by mutual consent of the employer and the employee only if the first meal period was
5 not waived.

6 84. As set forth above, during the relevant time period, Defendants had, and
7 continue to have, a company-wide policy and/or practice of understaffing their locations while
8 utilizing labor budgets, which, combined with the assignment of heavy workloads and failure
9 to schedule meal periods, resulted in a lack of meal period coverage and prevented Plaintiff
10 and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods
11 to which they were entitled. As a result, Plaintiff and other non-party Aggrieved Employees
12 had to work through all or part of their meal periods, had their meal periods interrupted,
13 and/or had to wait extended periods of time before taking meal periods. For example, Plaintiff
14 would be required to work through all or part of his meal periods, due to the heavy workload
15 and lack of coverage. Thus, Defendants fails to provide Plaintiff and other non-party
16 Aggrieved Employees with compliant, 30-minute meal periods.

17 85. Additionally, Defendants did not provide other non-party Aggrieved
18 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
19 hours in one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal
20 period waivers on days that they were entitled to meal periods and were not relieved of all
21 duties.

22 86. Moreover, Defendants had a company-wide policy of requiring all newly hired
23 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
24 the position that non-exempt, hourly paid employees had waived their rights to first and/or
25 second meal periods for the entirety of their employment and, on that basis, did not provide
26 them with all meal periods to which they were entitled. Furthermore, Defendants' "California
27 Meal and Rest Period Waiver and Acknowledgement Form" requires employees to provide
28 written notice should they wish to revoke the waiver. Defendants' presumption that meal

1 periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours
2 and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal
3 period waivers signed at or near the time of hire, and imposition on employees to revoke the
4 waivers in writing, discouraged and impeded Plaintiff and other non-party Aggrieved
5 Employees from taking all meal periods to which they were entitled.

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

10 [A]fter the meal break obligation is triggered . . . an employer is put to a
11 choice: it must (1) afford an off-duty meal period; (2) consent to a
12 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
13 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.

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

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

26 89. Furthermore, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees

1 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
2 to the extent that Defendants did pay other non-party Aggrieved Employees premium pay for
3 missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved
4 Employees at the correct rate of pay for premiums because Defendants systematically failed to
5 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
6 other forms of remuneration, in the regular rate of pay.

7 90. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
8 Employees compliant meal periods and failed to pay the full meal period premiums due.
9 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
10 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
11 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
12 2699(a), (f), and (g).

13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

15 91. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
17 non-party Aggrieved Employees' employment by Defendants.

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

24 93. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest
27 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
28 employer must "relinquish any control over how employees spend their break time, and

1 relieve their employees of all duties—including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 273 (2016).

4 94. Pursuant to the applicable IWC Wage Order and California Labor Code section
5 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
6 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
7 required rest period was not authorized and permitted.

8 95. During the relevant time period, Defendants regularly failed to authorize and
9 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
10 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
11 Defendants’ company-wide practices, including understaffing and assignment of heavy
12 workloads, have prevented Plaintiff and other non-party Aggrieved Employees from being
13 relieved of all duty in order to take compliant rest periods. Additionally, Defendants wholly
14 fails to schedule rest periods which, coupled with Defendants’ failure to provide adequate rest
15 period coverage, has further led to Plaintiff and other non-party Aggrieved Employees not
16 being authorized and permitted to take rest periods.

17 96. Moreover, Defendants maintains a company-wide on-premises rest period
18 policy, which effectively requires that Plaintiff and/or other non-party Aggrieved Employees
19 remain on Defendants’ premises during their rest periods. Because Plaintiff and/or other non-
20 party Aggrieved Employees are restricted from leaving the premises during rest periods, they
21 are denied the ability to use their rest periods freely for their own purposes, such as running
22 personal errands. Thus, Defendants effectively maintains control over Plaintiff and/or other
23 non-party Aggrieved Employees during rest periods.

24 97. As a result, Plaintiff and other non-party Aggrieved Employees would work
25 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being
26 permitted and authorized to take all ten (10) minute rest periods to which they were entitled.
27 For example, throughout his employment Plaintiff had to regularly forego his rest periods
28 because the restaurant was busy and there was a lack of coverage. When Plaintiff has been

1 able to take rest periods, they are often interrupted to assist customers.

2 98. Defendants also have engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized and
4 permitted. Because of this practice and/or policy, other non-party Aggrieved Employees have
5 not received all premium pay for missed rest periods. Alternatively, to the extent that
6 Defendants did pay other non-party Aggrieved Employees one (1) additional hour of premium
7 pay for missed rest periods, Defendants did not pay other non-party Aggrieved Employees at
8 the correct rate of pay for premiums because Defendants failed to include all forms of
9 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
10 remuneration, in the regular rate of pay.

11 99. Defendants' conduct violates the applicable IWC Wage Order and California
12 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
13 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
14 558 and/or 2699(a), (f), and (g).

15 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
16 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

22 101. During the relevant time period, Defendants have knowingly and intentionally
23 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
24 inaccurate wage statements. For example, Defendants issued uniform wage statements to
25 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
26 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
27 the pay period, including rates of pay for overtime wages, meal and rest period premiums,
28 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), and 226(a)(9).

102. Because Defendants did not record the time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock and/or deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), 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).

103. Additionally, 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).

104. The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock. In addition, Defendants failed to provide other non-party Aggrieved Employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and

1 convert the wage statements into hard copies at no expense to them.

2 105. California Labor Code section 1174(d) provides that “[e]very person employing
3 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
4 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
5 plants or establishments at which employees are employed, payroll records showing the hours
6 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
7 applicable piece rate paid to, employees employed at the respective plants or
8 establishments” Labor Code section 1174.5 provides that employers are subject to a
9 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
10 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
11 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
12 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
13 as a result of failing to record the off-the-clock hours that they worked.

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

27 107. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
28 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

108. 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.

109. 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.

110. 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; sick leave pay, and/or reporting time pay.

111. 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

112. 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

1 her employment, his or her wages shall become due and payable not later than seventy-two
2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

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

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

15 **REQUIRING RELEASE OF CLAIMS FOR WAGES DUE**

16 **VIOLATION OF LABOR CODE SECTION 206.5**

17 115. At all relevant times herein set forth, California Labor Code section 206.5
18 prohibits employers from requiring employees to execute releases of a claim or right "on
19 account of wages due, or to become due, or made as an advance on wages to be earned, unless
20 payment of those wages has been made. A release required or executed in violation of the
21 provisions of this section shall be null and void as between the employer and the employee."

22 116. During the relevant time period, Defendants required Plaintiff and other non-
23 party Aggrieved Employees to release their claims for unpaid wages as a condition to
24 receiving their paychecks. For example, Defendants required Plaintiff and other non-party
25 Aggrieved Employees to sign verifications on their timesheets that their timesheets were
26 accurate and correct; "I certify that the specific time records for that pay period fully and
27 accurately reports all of the time that I worked during the covered pay period, that I received
28 all of the rest period and meal period opportunities that I was legally entitled to for the

covered pay period, and if not, that I received all appropriate penalties.”

117. Defendants compelled Plaintiff and other non-party Aggrieved Employees to sign these false verifications when they, in fact, were not provided all meal or rest periods and/or had not been able to accurately record all of the hours they had worked. Defendants’ policy and practice of requiring Plaintiff and other non-party Aggrieved Employees to release their claims for meal or rest period violations and/or their claims for uncompensated hours worked as a condition to receiving their paychecks is in violation of California Labor Code section 206.5. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

COLLECTING OR RECEIVING WAGES ALREADY PAID

VIOLATION OF LABOR CODE SECTION 221 AND 224

118. At all times relevant herein, California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee’s wages if “a deduction is expressly authorized in writing by the employee.”

119. During the relevant time period, Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and/or other non-party Aggrieved Employees in violation of California Labor Code section 221. Defendants on a company-wide basis, maintained a policy that improperly deducted wages from Plaintiff’s and/or other non-party Aggrieved Employees’ pay pursuant to their policies and/or practices requiring employees to work off the clock. On information and belief, such deductions were not expressly authorized in writing by Plaintiff and other non-party Aggrieved Employees.

120. Defendants’ conduct as alleged herein violates California Labor Code sections 221 and 224. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

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SECRET PAYMENT OF A LOWER WAGE
VIOLATION OF LABOR CODE SECTION 223

121. At all times, California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

122. During the relevant time period, Defendants willfully and systematically deducted money from Plaintiff and/or other non-party Aggrieved Employees' wages without their express written authorization, pursuant to their policy requiring employees to work off-the-clock. In doing so, Defendants acted with the intent to deprive Plaintiff and/or other non-party Aggrieved Employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, Defendants paid Plaintiff and/or other non-party Aggrieved Employees lower wages than those they were entitled to while purporting that Plaintiff and/or other non-party Aggrieved Employees were properly paid.

123. Defendants' failure to pay Plaintiff and/or other non-party Aggrieved Employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Plaintiff and/or other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 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

124. 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

1 unused vacation pay.

2 125. Defendants had a company-wide policy and practice of failing to pay other non-
3 party Aggrieved Employees vested vacation wages that were owed to them at the end of their
4 employment. Specifically, Defendants failed to calculate and pay all earned vested vacation
5 time due to the hours other non-party Aggrieved Employees worked off-the-clock pursuant to
6 their company-wide policies and/or practices.

7 126. Other non-party Aggrieved Employees are therefore entitled to recover civil
8 penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

9 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**

10 **VIOLATION OF LABOR CODE SECTION 246**

11 127. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
12 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
13 days from the commencement of employment with paid sick days, to be accrued at least one
14 hour for every 30 hours worked. California Labor Code section 246(b)(4) requires that
15 employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent
16 paid leave or paid time off) in each year of the employee's employment. California Labor
17 Code section 246(l) provides that an employer shall calculate paid sick leave by using one of
18 two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the
19 same manner as the regular rate of pay for the workweek in which the employee uses paid sick
20 time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid
21 sick time for nonexempt employees shall be calculated by dividing the employee's total
22 wages, not including overtime premium pay, by the employee's total hours worked in the full
23 pay periods of the prior 90 days of employment."

24 128. During the relevant time period, Defendants did not pay other non-party
25 Aggrieved Employees the correct sick leave rates of pay. In addition to an hourly wage,
26 Defendants paid other non-party Aggrieved Employees incentive pay, nondiscretionary
27 bonuses, and/or other forms of remuneration. However, in violation of the California Labor
28 Code, Defendants failed to incorporate all remunerations, including incentive pay and/or

1 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
2 calculating the sick leave rate. Therefore, during times when other non-party Aggrieved
3 Employees took sick leave and received these other forms of pay, Defendants failed to pay all
4 sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants
5 paid other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead
6 of their regular rate of pay.

7 129. Defendants' failure to properly calculate the sick leave rates of pay based on all
8 remuneration paid has resulted in an underpayment of sick leave benefits to other non-party
9 Aggrieved Employees on a company-wide basis in violation of California Labor Code
10 sections 246(l).

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

13 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

14 **VIOLATION OF LABOR CODE SECTIONS 551 and 552**

15 131. At all relevant times herein, California Labor Code section 551 provides that
16 every person employed in any occupation of labor is entitled to one day's rest in seven.
17 Additionally, California Labor Code section 552 prohibits employers from requiring
18 employees to work more than six consecutive days without a day of rest.

19 132. At all relevant times herein set forth, California Labor Code section 556
20 exempts an employer from the day-of-rest requirement when the total hours worked by an
21 employee do not exceed 30 hours in any week or six hours in any one day thereof.

22 133. During the relevant period, on information and belief, Defendants required
23 other non-party Aggrieved Employees to work approximately six (6) or more hours per day
24 and seven (7) consecutive days in a workweek. Because other non-party Aggrieved
25 Employees worked over thirty (30) hours per week and over six (6) hours in any one day in a
26 workweek, they were not exempt from the day-of-rest requirement. To the extent that other
27 non-party Aggrieved Employees signed purported waivers of their right to a day's rest in
28 seven, such waivers are invalid.

1 134. Thus, during the relevant time period, and in violation of California Labor
2 Code sections 551 and 552, Defendants caused other non-party Aggrieved Employees to work
3 more than six days in seven. Other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE SUITABLE RESTING FACILITIES**
6 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
7 **REGULATIONS, TITLE 8, SECTION 11050(13)(B)**

8 135. At all relevant times herein, California Labor Code section 1198 makes it
9 illegal to employ an employee under conditions of labor that are prohibited by the applicable
10 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
11 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
12 The employment of any employee . . . under conditions of labor prohibited by the order is
13 unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that
14 “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and
15 shall be available to employees during work hours.”

16 136. Defendants’ California restaurant locations are generally similar in their layout
17 and design and there was, and continues to be, space that allows for a resting facility that
18 employees may use to cease work and recover during meal or rest periods. Defendants could
19 have provided Plaintiff and other non-party Aggrieved Employees with a suitable resting
20 facility within all of their restaurant locations, with reasonable or no modification, but instead
21 denied, and continue to deny, employees suitable areas to rest (e.g., a breakroom with seats).
22 As a result, Plaintiff and other non-party Aggrieved Employees were forced to adjust to areas
23 not conducive to resting.

24 137. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
25 with suitable resting facilities during their work hours, particularly during meal or rest
26 periods. In other words, during the times when Plaintiff and other non-party Aggrieved
27 Employees were legally allowed to forgo assigned tasks, as in during a meal or rest period,
28 Defendants denied them any area within their restaurant locations to cease work and recover.

Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved Employees of their rights to suitable resting facilities under California law.

138. As a result of Defendants' company-wide failure to provide suitable resting facilities in their restaurant locations, Plaintiff and other non-party Aggrieved Employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. Defendants' failure to provide suitable resting facilities to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

139. 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 SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(14)(A)

140. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable 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.”

141. California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

142. Defendants' California restaurants are generally similar in their layout and design and there was, and continues to be, space at the employee work areas to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could provide other non-party Aggrieved Employees with a seat or stool at their host stands, but instead deny employees seating and force other non-party Aggrieved Employees to stand

1 throughout the day.

2 143. Other non-party Aggrieved Employees spent a substantial portion of their day
3 behind or at these host stands. The nature of the work of an employee performing host duties
4 at host stands can reasonably be accomplished from a seated position. However, as set forth
5 herein, Defendants systematically, and on a company-wide basis, do not provide seats or
6 stools at or near the host stands, forcing other non-party Aggrieved Employees to stand
7 throughout their work shifts.

8 144. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11050(14)(A), because other
10 non-party Aggrieved Employees were not allowed to sit, even when the nature of their work
11 would reasonably permit the use of seats, nor were they provided with suitable seats.
12 Defendants' management did not inform other non-party Aggrieved Employees that they were
13 allowed to sit down, provide any means for them to sit down, or mention any policy regarding
14 sitting.

15 145. As a result of Defendants' company-wide policy and/or practice of prohibiting
16 employees from sitting during their shifts and failure to provide suitable seating, other non-
17 party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants'
18 failure to provide suitable seating to other non-party Aggrieved Employees violated and
19 continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001,
20 subdivision 14(A).

21 146. Other non-party Aggrieved Employees are therefore entitled to recover civil
22 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 **FAILURE TO PROVIDE SUITABLE SEATING**

24 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
25 **REGULATIONS, TITLE 8, SECTION 11050(14)(B)**

26 147. At all relevant times herein, California Labor Code section 1198 makes it
27 illegal to employ an employee under conditions of labor that are prohibited by the applicable
28 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of

1 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
2 The employment of any employee . . . under conditions of labor prohibited by the order is
3 unlawful.”

4 148. California Code of Regulations, Title 8, section 11050(14)(B) provides that
5 “[w]hen employees are not engaged in the active duties of their employment and the nature of
6 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
7 proximity to the work area and employees shall be permitted to use such seats when it does
8 not interfere with the performance of their duties.”

9 149. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because other
11 non-party Aggrieved Employees were not allowed to sit, even during lulls in their work
12 duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

13 150. As stated, Plaintiff alleges that Defendants’ California restaurant locations are
14 generally similar in their layout and design and there was, and continues to be, space near
15 their work areas (with reasonable or no modification to these work areas) to allow for the
16 presence and use of a seat or stool by other aggrieved employees during lulls in operation.
17 Defendants could have provided other non-party Aggrieved Employees with a seat or stool in
18 their work areas, but instead denied, and continue to deny, employees seating, forcing them to
19 stand throughout the day.

20 151. Defendants did not provide other non-party Aggrieved Employees with seats or
21 stools in reasonable proximity to their work areas to allow them to use seats when it would not
22 interfere with the performance of their duties for times when they were not engaged in active
23 duties that require standing. In other words, to the extent other non-party Aggrieved
24 Employees engaged in duties in which the nature of the work required standing, Defendants
25 denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants
26 did not inform other non-party Aggrieved Employees of their rights to a seat or stool under
27 California law.

28 152. As a result of Defendants’ company-wide policy and/or practice prohibiting

1 employees from sitting at any time, even when they were not engaged in active duties
2 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
3 work areas, other non-party Aggrieved Employees were forced to stand during shifts and
4 denied seats. Defendants' failure to provide suitable seating to other non-party Aggrieved
5 Employees violated and continues to violate California Labor Code section 1198 and IWC
6 Wage Order No. 5-2001, subdivision 14(B).

7 153. Other non-party Aggrieved Employees are therefore entitled to recover civil
8 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PAY REPORTING TIME PAY**

10 **VIOLATION OF LABOR CODE SECTION 1198**

11 154. California Labor Code section 1198 makes it illegal to employ an employee
12 under conditions of labor that are prohibited by the applicable wage order. California Labor
13 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
14 shall be the . . . standard conditions of labor for employees. The employment of any employee
15 . . . under conditions of labor prohibited by the order is unlawful.”

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

26 156. During the relevant time period, Defendants violated California Labor Code
27 section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because
28 Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they

1 reported to work for their usual or scheduled shift but were put to work for less than half of
2 the usual or scheduled day's work.

3 157. Defendants had a company-wide practice of sending other non-party Aggrieved
4 Employees home early from their shifts, including before they had worked at least half of their
5 usual or scheduled shift, but would not pay other non-party Aggrieved Employees for half of
6 their usual or scheduled shift. Although other non-party Aggrieved Employees would report
7 to work based on the schedule that Defendants provided to them, Defendants would send them
8 home before they had worked at least half of their scheduled shifts without giving them
9 reporting time pay.

10 158. Accordingly, other non-party Aggrieved Employees were not properly
11 compensated with reporting time pay in violation of California Labor Code section 1198 and
12 California Code of Regulations, Title 8, section 11050(5)(A). Other non-party Aggrieved
13 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
14 2699(a), (f), and (g).

15 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

16 **VIOLATION OF LABOR CODE SECTION 2802**

17 159. At all times herein set forth, California Labor Code section 2802 provides that
18 an employer must reimburse employees for all necessary expenditures and losses incurred by
19 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
20 to prevent employers from passing off their cost of doing business and operating expenses on
21 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
22 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen
23 tools or equipment are required by the employer or are necessary to the performance of a job,
24 such tools and equipment shall be provided and maintained by the employer, except that an
25 employee whose wages are at least two (2) times the minimum wage may provide and
26 maintain hand tools and equipment customarily required by the particular trade or craft."
27 IWC Wage Order No. 5-2001 further provides that: "[w]hen uniforms are required by the
28 employer to be worn by the employee as a condition of employment, such uniforms shall be

1 provided and maintained by the employer.”

2 160. First, during the relevant time period, Defendants, on a company-wide basis,
3 required that other non-party Aggrieved Employees use their own personal vehicles for work
4 purposes, but failed to reimburse them for all costs of travel, including mileage. Although
5 Defendants required other non-party Aggrieved Employees to utilize their personal vehicles to
6 carry out their work-related responsibilities, Defendants failed to reimburse them for their
7 mileage or travel expenses.

8 161. Second, during the relevant time period, Defendants had a company-wide
9 policy of requiring other non-party Aggrieved Employees to utilize their own personal mobile
10 devices, including cellular phones, and/or mobile data to carry out their job duties, but
11 Defendants failed to reimburse them for the costs of their work-related mobile device
12 expenses. For example, other non-party Aggrieved Employees were required to use their
13 personal cellular phones to communicate with Defendants’ management regarding work-
14 related matters. Although Defendants required other non-party Aggrieved Employees to
15 utilize their personal mobile devices and/or mobile data to carry out their work-related
16 responsibilities, Defendants failed to reimburse them for this cost.

17 162. Third, during the relevant time period, Defendants, on a company-wide basis,
18 required Plaintiff and other non-party Aggrieved Employees to obtain and pay for certain
19 certifications, which were required for their continued employment, as well as associated costs
20 such as training. For example, Plaintiff and other non-party Aggrieved Employees complied
21 with this requirement to obtain a food handler certification from ServSafe, but, on information
22 and belief, Defendants did not reimburse them for the costs of obtaining the certification.
23 Thus, Defendants failed to reimburse Plaintiff and other non-party Aggrieved Employees for
24 the costs of obtaining these certifications, including training fees.

25 163. Fourth, during the relevant time period, Defendants required other non-party
26 Aggrieved Employees to purchase tools, supplies, and equipment necessary for the
27 performance of their duties, but failed to reimburse them for their out-of-pocket costs. For
28 example, other non-party Aggrieved Employees purchased pens and non-slip shoes because

1 Defendants failed to provide them with the necessary tools, supplies, and/or safety equipment
2 which were required to perform his duties. Although Defendants required other non-party
3 Aggrieved Employees to purchase and use their own tools, supplies, and/or equipment in the
4 performance of their duties, they did not reimburse them for these expenses.

5 164. Fifth, during the relevant time period, Defendants expected Plaintiff and other
6 non-party Aggrieved Employees to report to work in clean and presentable uniforms bearing
7 the Buca di Beppo restaurant logo, including an apron and/or a uniform shirt. Due to the
8 nature of restaurant work, Plaintiff's and other non-party Aggrieved Employees' uniform
9 items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such
10 that they were unable to mix these clothes in with other laundry. As a result, Plaintiff had to
11 wash his uniform items separately from his regular clothing, thus incurring additional utility
12 and laundry expenses for the upkeep of his uniforms. Thus, Defendants failed to maintain the
13 uniforms they required Plaintiff and other non-party Aggrieved Employees to wear during
14 their shifts and forced them to incur the costs of maintaining employee uniforms.

15 165. Defendants could have provided Plaintiff and other non-party Aggrieved
16 Employees with the actual equipment required for use on the job, such as company vehicles
17 and company mobile devices; necessary tools, supplies and equipment; and access to
18 laundering services. Or, Defendants could have reimbursed employees for the costs of their
19 travel expenses, mileage, mobile device usage; certification fees; tools, supplies, and
20 equipment; and laundering expenses or provided a uniform maintenance allowance. Instead,
21 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
22 Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum
23 wage.

24 166. Defendants' company-wide policy and/or practice of passing on their operating
25 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
26 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
27 other non-party Aggrieved Employees for necessary business-related expenses and costs.

28 167. Plaintiff and other non-party Aggrieved Employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 **REQUEST FOR JURY TRIAL**

3 Plaintiff requests a trial by jury.

4 **PRAYER FOR RELIEF**

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

7 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
8 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
13 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
14 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
15 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
16 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
17 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
18 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
19 earned wages upon termination); 204 (by failing to timely pay all earned wages during
20 employment); 206.5 (by requiring employees to release claims as a condition to receive
21 paychecks); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly
22 paying wages lower than required by statute); 227.3 (by failing to pay all vested vacation days
23 upon termination); 246 (by failing to properly calculate sick leave pay); 551 and 552 (by
24 failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by
25 failing to provide suitable resting facilities); 1198 and the applicable IWC Wage Order (by
26 failing to provide suitable seating); 1198 and the applicable IWC Wage Order (by failing to
27 provide reporting time pay); and 2802 (by failing to reimburse business expenses);

28 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,

1 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
2 201, 202, 204, 206.5, 221, 223, 224, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 551, 552,
3 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4 4. For attorneys' fees and costs pursuant to California Labor Code section
5 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
6 Labor Code sections 201, 202, 204, 206.5, 221, 223, 224, 226(a), 226.7, 227.3, 246, 510,
7 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

11
12 Dated: March 8, 2024

Respectfully submitted,

13 Capstone Law APC

14 

15 By: _____

16 Robert Drexler
17 Molly DeSario
18 Jonathan Lee

19 Attorneys for Plaintiff Brian Hernandez
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27
28

EXHIBIT “1”



1875 Century Park East, Suite 1000
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310.556.4811 Main | 310.943.0396 Fax

JEZZETTE RON
310.712.8142 Direct
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January 2, 2024

VIA ONLINE SUBMISSION

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

Subject: *Brian Hernandez v. Buca Restaurants 2, Inc., et al.*

Dear PAGA Administrator:

This office represents Brian Hernandez in connection with his claims under the California Labor Code. Mr. Hernandez was an employee of BUCA RESTAURANTS 2, INC.; EARL ENTERPRISES CORPORATE, LLC; and/or EARL ENTERPRISES HOLDINGS, INC. For the purpose of this letter, Mr. Hernandez collectively refers to these entities as "BUCA."

The employers may be contacted directly at the addresses below:

BUCA RESTAURANTS 2, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

EARL ENTERPRISES CORPORATE, LLC
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

EARL ENTERPRISES HOLDINGS, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

Mr. Hernandez 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. Hernandez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BUCA 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.

BUCA has employed Mr. Hernandez as an hourly paid, non-exempt Busser/Runner from approximately July 2021 through December 2022, and then from February 2023 to present at its Buca di Beppo locations in Universal City and Pasadena, California. Mr. Hernandez typically works shifts of six (6) or more hours per day and six (6) or more days per week. His job duties include, without limitation, taking customer orders, serving food to customers, preparing and cleaning tables.

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

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

BUCA RESTAURANTS 2, INC. is a Minnesota corporation, while EARL ENTERPRISES CORPORATE, LLC and EARL ENTERPRISES HOLDINGS, INC. are a Florida limited liability company and corporation, respectively. Together, they own and operate 16 Buca di Beppo restaurant locations in California. Upon information and belief, BUCA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Orlando, Florida, for all non-exempt, hourly paid employees working for BUCA in California, including Mr. Hernandez and other aggrieved employees. At all relevant times, BUCA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hernandez and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in 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.

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

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

First, during the relevant time period, BUCA had, and continues to have, a company-wide policy and/or practice of requiring Mr. Hernandez and other aggrieved employees to perform tasks while off-the-clock before or after their scheduled shifts. For example, prior to starting his shift, BUCA has required Mr. Hernandez to attend to customers and clean tables. As a further example, BUCA's management would call other aggrieved employees off-the-clock to discuss work-related matters.

Additionally, because BUCA's timekeeping system was integrated with the company's point-of-sale ("POS") system, Mr. Hernandez and other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer sales transactions. For instance, Mr. Hernandez would be required to wait approximately 10 minutes under BUCA's control until a POS machine was available for clocking-in, time for which he was not paid. Moreover, BUCA's timekeeping system prevented employees from clocking in too early before their scheduled shifts, prohibiting them from recording time worked prior to the start of their scheduled shifts. Consequently, on information and belief, Mr. Hernandez and other aggrieved employees have performed work prior to the start of their shifts, but would be unable to record this time. For example, Mr. Hernandez would sometimes called in to report to work earlier than his usual shift start time, but would be required to wait approximately 10 minutes each time for a manager to authorize him to clock in earlier, because the timekeeping system did not allow him to clock in prior to his scheduled shift start time.

Second, BUCA had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. On information and belief, BUCA's uniform use of labor budgeting and understaffing resulted in a failure to provide Mr. Hernandez and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to guests. Because BUCA did not employ or staff a sufficient number of employees to meet guest demand, there was no one available to relieve employees needing meal period coverage, and Mr. Hernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. BUCA also had a practice of failing schedule meal periods, which further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Hernandez has worked through his meal periods to keep up with the demands of work. Thus, Mr. Hernandez and other aggrieved employees would be required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

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

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

BUCA's failure to pay Mr. Hernandez 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. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in 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").

First, as stated above, BUCA had, and continues to have, a company-wide policy and/or practice of requiring Mr. Hernandez and other aggrieved employees to perform work while off-the-clock, including attending to customers, cleaning tables, responding to phone calls from management regarding work-related matters, and waiting to clock in. Additionally, as stated above, due to BUCA's implementation of a timekeeping system that prevented employees from clocking in until their scheduled shifts, Mr. Hernandez and other aggrieved employees would be prevented from recording time worked prior to the start of their scheduled shifts. Thus, BUCA has failed to track this time Mr. Hernandez and other aggrieved employees spent working off-the-clock, and Mr. Hernandez and other aggrieved employees have received no compensation for this time.

Second, as set forth above, due to BUCA's uniform practices of utilizing labor budgets, understaffing its locations, assigning heavy workloads, and failing to schedule meal periods, Mr. Hernandez and other aggrieved employees have been impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. As a result, Mr. Hernandez and other aggrieved employees were not relieved of all duties during unpaid meal periods and were required to work off-the-clock, time for which they were not paid.

Thus, BUCA did not pay at least minimum wages for all hours worked by Mr. Hernandez and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, BUCA 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, BUCA regularly failed to pay at least minimum wages to Mr. Hernandez 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. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the

employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated, BUCA had, and continues to have, a company-wide policy and/or practice of understaffing its locations while utilizing labor budgets, which, combined with the assignment of heavy workloads and failure to schedule meal periods, resulted in a lack of meal period coverage and prevented Mr. Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Hernandez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Hernandez would be required to work through his meal periods, due to the heavy workload and lack of coverage. Thus, BUCA fails to provide Mr. Hernandez and other aggrieved employees with compliant, 30-minute meal periods.

Moreover, BUCA 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. Hernandez 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, BUCA had a company-wide policy of requiring employees to sign blanket meal period waivers. BUCA 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. Furthermore, BUCA's meal period waiver form requires employees to provide written notice should they wish to revoke the waiver. BUCA'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 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 Mr. Hernandez 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 BUCA required Mr. Hernandez 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

BUCA's obligation to provide Mr. Hernandez and/or other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

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

Furthermore, BUCA engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Mr. Hernandez and other aggrieved employees have not received all premium pay for missed, interrupted, late and/or shortened meal periods. Alternatively, to the extent that BUCA did pay other aggrieved employees premium pay for missed, late, interrupted, and/or shortened meal periods, BUCA did not pay other aggrieved employees at the correct rate of pay for premiums because BUCA systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BUCA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, BUCA regularly failed to authorize and permit Mr. Hernandez 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, BUCA's company-wide practices of understaffing and assigning heavy workloads have prevented Mr. Hernandez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, BUCA wholly fails to schedule rest periods at all, which, coupled with BUCA's failure to provide adequate rest period coverage, has further led to Mr. Hernandez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, BUCA maintains a company-wide on-premises rest period policy, which effectively requires that Mr. Hernandez and/or other aggrieved employees remain on BUCA's premises during their rest periods. Because Mr. Hernandez and/or other aggrieved employees are restricted from leaving the premises during rest periods, they are denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BUCA effectively maintains control over Mr. Hernandez and/or other aggrieved employees during rest periods.

As a result of BUCA's practices and policies, Mr. Hernandez 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. Hernandez had to regularly forego his rest periods because the restaurant was busy, and there was a lack of coverage. When Mr. Hernandez has been able to take rest periods, they are often interrupted to assist customers.

BUCA also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Hernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BUCA did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BUCA did not pay other aggrieved employees at the correct rate of pay for premiums because BUCA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BUCA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

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

First, because BUCA did not record the time Mr. Hernandez and other aggrieved employees spent working off-the-clock and/or deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), BUCA did not list the correct amount of gross wages and net wages earned by Mr. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BUCA failed to accurately list the total number of hours worked by Mr. Hernandez 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 BUCA did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BUCA 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). BUCA also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock. In addition, BUCA failed to provide other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them.

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), BUCA willfully failed to maintain accurate payroll records for Mr. Hernandez 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, BUCA engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Hernandez and other aggrieved employees in violation of section 1198. Furthermore, in light of BUCA's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, BUCA kept no records of meal start and end times for second meal periods.

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

Mr. Hernandez 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.

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

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.

BUCA 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, BUCA 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 policies and/or practices.

BUCA'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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, BUCA required Mr. Hernandez and/or other aggrieved employees to release their claims for meal and/or rest period violations, as well as their claims for uncompensated hours worked, as a condition of receiving their paychecks. For example, BUCA required Mr. Hernandez and/or other aggrieved employees to sign verifications that their timesheets were accurate and correct: "I certify that the specific time records for that pay period fully and accurately reports all of the time that I worked during the covered pay period, that I received all of the rest period and meal period opportunities that I was legally entitled to for the covered pay period, and if not, that I received all appropriate penalties."

BUCA compelled Mr. Hernandez and/or other aggrieved employees to sign these false verifications when they, in fact, were not provided all meal or rest periods and/or had not been able to accurately record all of the hours they had worked. BUCA's policy and practice of requiring Mr. Hernandez and/or other aggrieved employees to release their claims for meal or rest period violations and/or their claims for uncompensated hours worked, as a condition to receiving their wages, is in violation of California Labor Code section 206.5.

Mr. Hernandez and/or other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, BUCA unlawfully deducted a portion of wages previously paid to Mr. Hernandez and/or other aggrieved employees in violation of California Labor Code section 221. During the relevant time period, BUCA maintained a company-wide policy that improperly deducted wages from Mr. Hernandez's and/or other aggrieved employees' pay pursuant to its policies and/or practices of requiring employees to work off-the-clock. On information and belief, such deductions were not expressly authorized in writing by Mr. Hernandez and/or other aggrieved employees.

BUCA's practice, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Hernandez's and/or other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Mr. Hernandez and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, BUCA willfully and systematically deducted money from Mr. Hernandez and/or other aggrieved employees' wages without their express written authorization pursuant to their policies and/or practices of requiring employees to work off-the-clock. In doing so, BUCA acted with the intent to deprive Mr. Hernandez and/or other aggrieved employees of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law. Thus, BUCA paid Mr. Hernandez and/or other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Hernandez and/or other aggrieved employees were properly paid.

BUCA's failure to pay Mr. Hernandez and/or other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Hernandez and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave and Provide Written Notice of 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. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, BUCA did not pay other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, BUCA paid other aggrieved employees incentive pay,

nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BUCA failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, 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, BUCA failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, BUCA paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

Moreover, during the relevant time period, BUCA failed, on a company-wide basis, to provide Mr. Hernandez and/or other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them.

BUCA's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis, in violation of Labor Code section 246(l). BUCA's systematic failure to provide written notice of sick leave benefits to Mr. Hernandez and/or other aggrieved employees is in violation of Labor Code section 248.6(d).

Mr. Hernandez and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

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

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

Thus, BUCA caused other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11050(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said

employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

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

BUCA had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. Although other aggrieved employees would report to work based on the schedule that BUCA provided to them, BUCA would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California 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." California Code of Regulations, Title 8, section 11050(13)(B) provides that "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

BUCA's California restaurant locations are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. BUCA could have provided Mr. Hernandez and other aggrieved employees with a suitable resting facility within all of its restaurant locations, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Mr. Hernandez and other aggrieved employees were forced to adjust to areas not conducive to resting.

BUCA did not provide Mr. Hernandez and other aggrieved employees with suitable resting facilities during their work hours, particularly during meal or rest periods. In other words, during the times when Mr. Hernandez and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, BUCA denied them any area within its restaurant locations to cease work and recover. Moreover, BUCA did not inform Mr. Hernandez and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of BUCA's company-wide failure to provide suitable resting facilities in its restaurant locations, Mr. Hernandez and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their restaurants to cease work and recover. BUCA's failure to provide suitable resting facilities to Mr. Hernandez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BUCA into compliance with California's resting facilities requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California 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.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* At 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

BUCA's California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands to allow for the presence and use of a seat or stool other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. BUCA could provide other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, BUCA systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing other aggrieved employees to stand throughout their work shifts.

BUCA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. BUCA's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of BUCA's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. BUCA's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BUCA into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable 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.” California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen 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.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

BUCA's California restaurant locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. BUCA could provide other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

BUCA did not provide aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, BUCA denied them the use of seats nearby during lulls in their work duties. Moreover, BUCA did not inform and other aggrieved employees of their rights to a seat or stool under California law.

As a result of BUCA's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. BUCA's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BUCA into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, BUCA, on a company-wide basis, required that other aggrieved employees use their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. Although BUCA required other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, BUCA failed to fully reimburse them for their mileage or travel expenses.

Second, during the relevant time period, BUCA had a company-wide policy of requiring other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but BUCA failed to reimburse them for the costs of their work-related mobile device expenses. For example, other aggrieved employees were required to use their personal cellular phones to communicate with BUCA's management regarding work-related matters. Although BUCA required other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, BUCA failed to reimburse them for this cost.

Third, during the relevant time period, BUCA, on a company-wide basis, required other aggrieved employees to obtain and pay for certain certifications, which were required for their continued employment, as well as associated costs such as training. For example, other aggrieved employees complied with this requirement to obtain a food handler certification, but, on information and belief, BUCA did not reimburse them for the costs of obtaining the certification. Thus, BUCA failed to reimburse other aggrieved employees for the costs of obtaining these certifications, including training fees.

Fourth, during the relevant time period, BUCA required other aggrieved employees to purchase tools, supplies, and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, other aggrieved employees purchased pens and non-slip shoes because BUCA failed to provide them with the necessary tools, supplies, and/or safety equipment which were required to perform his duties. Although BUCA required other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

Fifth, during the relevant time period, BUCA expected Mr. Hernandez and other aggrieved employees to report to work in clean and presentable uniforms bearing the Buca di Beppo restaurant logo, including an apron and/or a uniform shirt. Due to the nature of restaurant work, Mr. Hernandez and other aggrieved

employees' uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, they had to wash their uniform items separately from their regular clothing, thus incurring additional utility and laundry expenses for the upkeep of their uniforms. Thus, BUCA failed to maintain the uniforms it required Mr. Hernandez and other aggrieved employees to wear during their shifts and forced them to incur the costs of maintaining employee uniforms.

BUCA could have provided Mr. Hernandez and other aggrieved employees with the actual equipment for use on the job, such as company vehicles and company mobile devices; necessary tools, supplies and equipment; and access to laundering services. Or, BUCA could have reimbursed employees for the costs of their travel expenses; mileage; mobile device usage; certification fees; tools, supplies, and equipment; and laundering expenses or provided a uniform maintenance allowance. Instead, BUCA passed these operating costs off onto Mr. Hernandez and other aggrieved employees. At all relevant times, Mr. Hernandez did not earn at least two (2) times the minimum wage.

Thus, BUCA had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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

At all relevant times, on information and belief, BUCA failed, on a company-wide basis, to provide written notice to Mr. Hernandez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). BUCA's failure to provide other aggrieved employees with written notice of basic information regarding their employment with BUCA is in violation of Labor Code section 2810.5.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each

pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” BUCA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Hernandez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Hernandez 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 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against BUCA for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Hernandez 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. Hernandez’s reasonable attempt to settle his dispute with BUCA prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BUCA of Mr. Hernandez’s aforementioned grievances and the proposed remedies as detailed below, while affording BUCA a reasonable opportunity to satisfy Mr. Hernandez’s demands.

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

1. BUCA shall pay Mr. Hernandez and all other aggrieved employees employed by BUCA at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BUCA 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, provided lawful meal and rest periods, and paid all reporting time pay.
3. BUCA shall conduct a survey or interview all current and former aggrieved employees in California who worked for BUCA 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; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses; mileage; mobile device expenses; certification fees; tools, supplies, and equipment; laundry expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. BUCA shall pay 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. BUCA also shall pay 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. BUCA shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BUCA's benefit, including, but not limited to, travel expenses and mileage; mobile device expenses; certification fees; tools, supplies, and equipment; laundry expenses; or other expenditures, as required by Labor Code section 2802.
6. BUCA shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. BUCA shall provide all aggrieved employees employed by BUCA 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).
8. BUCA 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.
9. BUCA 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.
10. BUCA shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition for receiving their paychecks (Labor Code section 206.5).
11. BUCA shall properly calculate 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 248.6(b)(3)(A). Additionally, BUCA shall provide aggrieved employees with written notice on wage statements and/or other separate written statements that list the amount of paid sick leave available to them, as required by Labor Code section 248.6(d).
12. BUCA shall pay each aggrieved employee unpaid wages and compensation for violations arising from its practice of unlawful deductions (Labor Code sections 221 and 224) and secret payment of lower wages (Labor Code section 223).
13. BUCA shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
14. BUCA shall provide all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
15. BUCA shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
16. BUCA shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
17. BUCA 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, 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,

A handwritten signature in black ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: BUCA RESTAURANTS 2, INC. (via U.S. Certified Mail); EARL ENTERPRISES CORPORATE, LLC (via U.S. Certified Mail); EARL ENTERPRISES HOLDINGS, INC. (via U.S. Certified Mail)

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



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4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

HERNANDEZ
BUCA 2

PS Form 3811, July 2020 PSN 7530-02-000-9053 See Reverse for Instructions

7022 2410 0000 0742 2202

BUCA RESTAURANTS 2, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

SENDER: COMPLETE THIS SECTION

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

BUCA RESTAURANTS 2, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839



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2. Article Number (Transfer from service label)

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

☐ Agent

☐ Addressee

Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express[®]
- ☐ Registered Mail[™]
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation[™]
- ☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery

(0)

Domestic Return Receipt

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



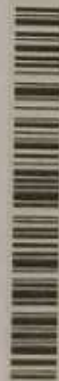
7022 2410 0000 2406 1320

EARL ENTERPRISES
CORPORATE, LLC
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse

EARL ENTERPRISES
CORPORATE, LLC
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839



9590 9402 7690 2122 7194 68

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1320

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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

Restricted Delivery

Domestic Return Receipt

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

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

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (Print box and fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
Postmark

EARL ENTERPRISES
CORPORATE, LLC
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

HERNANDEZ
V. BUCARZ

7022 2410 0000 2406 1320

PS Form 3800, April 2013 PSN 7530-02-000-9053

GENIIFIED MAIL



7022 2470 0000 2406 1313

**EARL ENTERPRISES
HOLDINGS, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839**

SENDER: COMPLETE THIS SECTION

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

EARL ENTERPRISES
HOLDINGS, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839



9590 9402 7690 2122 7194 44

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1313

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent

A. Received by (Printed Name)	C. Date of Delivery
-------------------------------	---------------------

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

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

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

OFFICIAL USE

Copyright © 2001

Extra Services & Fees: Check box, add fee as appropriate
☐ Return Receipt (optional) \$

HELENANDER
V. BULAZ

1998

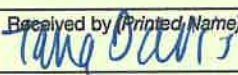
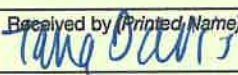
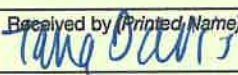
EARL ENTERPRISES
HOLDINGS, INC.
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839

THE UNIVERSITY OF CHICAGO

ETET 9042 0000 0T42 2202

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. EARL ENTERPRISES HOLDINGS, INC. 4700 MILLENIA BLVD., STE 400 ORLANDO, FL 32839  9590 9402 7690 2122 7194 44 2. Article Number (Transfer from service label) 7022 2410 0000 2406 1313	A. Signature ☒ Agent ☐ Addressee X  <table style="width: 100%; border: 1px solid black; margin-top: 5px;"> <tr> <td style="width: 50%; padding: 2px;">3. Received by (Printed Name) </td> <td style="width: 50%; padding: 2px;">C. Date of Delivery 11/4/2019</td> </tr> </table> 4. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type <table style="width: 100%; font-size: small;"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☒ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td>☐ Insured Mail</td> <td></td> </tr> </table> stricted Delivery	3. Received by (Printed Name) 	C. Date of Delivery 11/4/2019	☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☒ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™	☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery	☐ Collect on Delivery Restricted Delivery		☐ Insured Mail	
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☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery																
☐ Collect on Delivery Restricted Delivery																	
☐ Insured Mail																	
PS Form 3811, July 2020 PSN 7530-02-000-9053																	

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. BUCA RESTAURANTS 2, INC. 4700 MILLENIA BLVD., STE 400 ORLANDO, FL 32839  9590 9402 7690 2122 7194 51 2. Article Number (Transfer from service label) 7022 2410 0000 2406 1306	A. Signature ☒ Agent ☐ Addressee X  <table style="width: 100%; border: 1px solid black; margin-top: 5px;"> <tr> <td style="width: 50%; padding: 2px;">3. Received by (Printed Name) </td> <td style="width: 50%; padding: 2px;">C. Date of Delivery 11/4/2019</td> </tr> </table> 4. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No 3. Service Type <table style="width: 100%; font-size: small;"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☒ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td>☐ Insured Mail</td> <td></td> </tr> </table> Mail Restricted Delivery (0)	3. Received by (Printed Name) 	C. Date of Delivery 11/4/2019	☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☒ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™	☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery	☐ Collect on Delivery Restricted Delivery		☐ Insured Mail	
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☐ Adult Signature Restricted Delivery	☐ Registered Mail™																
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☐ Collect on Delivery Restricted Delivery																	
☐ Insured Mail																	
PS Form 3811, July 2020 PSN 7530-02-000-9053																	

Domestic Return Receipt

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**EARL ENTERPRISES
CORPORATE, LLC**
4700 MILLENIA BLVD., STE 400
ORLANDO, FL 32839



9590 9402 7690 2122 7194 68

2. Article Number (Transfer from service label)

7022 2410 0000 2406 1320

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Jenny Cruz*

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery
11/5/24

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

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

Restricted Delivery

Domestic Return Receipt