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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

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

Plaintiff,

vs.

YOLANDA'S OF SIMI VALLEY, INC., a
California corporation; YOLANDA'S INC.,
a California corporation; YOLANDA'S OF
CAMARILLO, INC., a California
corporation; YOLANDA'S OF VENTURA,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

VENTURA
SUPERIOR COURT
FILED

APR 30 2024

BRENDA L. McCORMICK
Executive Officer and Clerk
By: _____, Deputy

D. HERNANDEZ

Case No.: 2024CUOE019841

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

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

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

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

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

11 **THE PARTIES**

12 4. Plaintiff Mauricio Olmedo is a resident of Ventura, in Ventura County,
13 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
14 approximately July 2000 to September 2023. Plaintiff worked for Defendants as a
15 Bartender/Server, Assistant Manager, and General Manager at their restaurant location in Simi
16 Valley, California. During his employment, Plaintiff typically worked six (6) to ten (10)
17 hours per day and six (6) days per week. Plaintiff's primary job duties included, without
18 limitation, creating schedules, placing orders for the bar and the kitchen, attending meetings,
19 providing customer service, and managing restaurant operations.

20 5. YOLANDA'S OF SIMI VALLEY, INC. was and is, upon information and
21 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county and the State of California.

23 6. YOLANDA'S, INC. was and is, upon information and belief, a California
24 corporation, and at all times hereinafter mentioned, an employer whose employees are
25 engaged throughout this county and the State of California.

26 7. YOLANDA'S OF CAMARILLO, INC. was and is, upon information and
27 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
28 employees are engaged throughout this county and the State of California.

1 8. YOLANDA’S OF VENTURA, INC. was and is, upon information and belief, a
2 California corporation, and at all times hereinafter mentioned, an employer whose employees
3 are engaged throughout this county and the State of California.

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

8 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
9 were the partners, agents, owners, or managers of YOLANDA’S OF SIMI VALLEY, INC.;
10 YOLANDA’S, INC.; YOLANDA’S OF CAMARILLO, INC.; and YOLANDA’S OF
11 VENTURA, INC. at all relevant times.

12 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
13 acts and omissions alleged herein was performed by, or is attributable to, YOLANDA’S OF
14 SIMI VALLEY, INC.; YOLANDA’S, INC.; YOLANDA’S OF CAMARILLO, INC.;
15 YOLANDA’S OF VENTURA, INC.; and/or DOES 1 through 10 (collectively, “Defendants”
16 or “YOLANDA’S”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
17 working in concert with, each of the other co-Defendants and was acting within the course and
18 scope of such agency, employment, joint venture, or concerted activity with legal authority to
19 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
20 represent, the official policy of Defendants.

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

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

28 14. Under California law, Defendants are jointly and severally liable as employers

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

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

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

28 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times

1 there has existed a unity of interest and ownership between Defendants such that any
2 individuality and separateness between the entities has ceased.

3 17. YOLANDA'S OF SIMI VALLEY, INC.; YOLANDA'S, INC.; YOLANDA'S
4 OF CAMARILLO, INC.; YOLANDA'S OF VENTURA, INC.; and DOES 1 through 10 are
5 therefore alter egos of each other.

6 18. Adherence to the fiction of the separate existence of Defendants would permit
7 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
8 from liability for the wrongful acts committed by them under the name YOLANDA'S.

9 19. Plaintiff further alleges, upon information and belief, that Defendants
10 YOLANDA'S OF SIMI VALLEY, INC.; YOLANDA'S, INC.; YOLANDA'S OF
11 CAMARILLO, INC.; and YOLANDA'S OF VENTURA, INC. are alter egos of each other for
12 the following reasons:

- 13 (a) On the California Secretary of State's website
14 (<https://bizfileonline.sos.ca.gov/>), YOLANDA'S OF SIMI VALLEY,
15 INC.; YOLANDA'S, INC.; YOLANDA'S OF CAMARILLO, INC.;
16 and YOLANDA'S OF VENTURA, INC. have the same mailing
17 address, "1363 DONLON ST. #20, VENTURA, CA 93003";
- 18 (b) According to their most recent "Statement of Information" forms filed
19 with the California Secretary of State, YOLANDA'S OF SIMI
20 VALLEY, INC.; YOLANDA'S, INC.; YOLANDA'S OF
21 CAMARILLO, INC.; and YOLANDA'S OF VENTURA, INC. share
22 common officers and/or directors, including, but not limited to,
23 Roderick E. Gietzen, who serves as Chief Executive Officer; and Laura
24 Gietzen-Plasmyer, who serves as Chief Financial Officer;
- 25 (c) On the California Secretary of State's website, YOLANDA'S OF SIMI
26 VALLEY, INC. and YOLANDA'S OF CAMARILLO, INC. share the
27 same agent for service of process, Laura Plasmyer; and
- 28 (d) On information and belief, YOLANDA'S OF SIMI VALLEY, INC.;

1 YOLANDA’S, INC.; YOLANDA’S OF CAMARILLO, INC.; and
2 YOLANDA’S OF VENTURA, INC. utilize the same standardized
3 employment forms and issue the same employment policies.

4 **GENERAL ALLEGATIONS**

5 20. Defendants are a chain of family-owned Mexican restaurants with at least four
6 (4) locations in CA. Upon information and belief, Defendants maintain a single, centralized
7 Human Resources (“HR”) department at their company headquarters in Ventura, California,
8 which is responsible for the recruiting and hiring of new employees, and communicating and
9 implementing Defendants’ company-wide policies, including timekeeping policies and meal
10 and rest period policies, to employees throughout California.

11 21. In particular, Plaintiff and class members, on information and belief, received
12 the same standardized documents and/or written policies. Upon information and belief, the
13 usage of standardized documents and/or written policies, including new-hire documents,
14 indicate that Defendants dictated policies at the corporate level and implemented them
15 company-wide, regardless of their employees’ assigned locations or positions. Upon
16 information and belief, Defendants set forth uniform policies and procedures in several
17 documents provided at an employee’s time of hire.

18 22. Upon information and belief, Defendants maintain a centralized Payroll
19 department at their company headquarters in Ventura, California, which processes payroll for
20 all non-exempt, hourly paid employees working for Defendants at their various locations in
21 California, including Plaintiff and class members. Based upon information and belief,
22 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
23 employees in California, irrespective of their work locations. Upon information and belief,
24 Defendants process payroll for departing employees in the same manner throughout the State
25 of California, regardless of the manner in which each employee’s employment ends.

26 23. Defendants continue to employ non-exempt or hourly paid employees in
27 California.

28 24. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

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

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

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

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

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

1 period.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to rest periods in
4 accordance with the California Labor Code and applicable IWC Wage Order or payment of
5 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
6 permitted to take a compliant rest period and that Plaintiff and class members were not
7 authorized and permitted to take compliant rest periods or provided with payment of one (1)
8 additional hour of pay at their regular rates of pay when they were not authorized and
9 permitted to take a compliant rest period.

10 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to receive complete and
12 accurate wage statements in accordance with California law. In violation of the California
13 Labor Code, Plaintiff and class members were not provided complete and accurate wage
14 statements.

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

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to timely payment of all
21 wages earned upon termination of employment. In violation of the California Labor Code,
22 Plaintiff and class members did not receive payment of all wages due, including, but not
23 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
24 permissible time periods.

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to timely payment of wages
27 during their employment. In violation of the California Labor Code, Plaintiff and class
28 members did not receive payment of all wages, including, but not limited to, overtime wages,

1 minimum wages, and/or meal and rest period premiums, within permissible time periods.

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

8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
10 were entitled to sit when it did not interfere with the performance of their duties and also have
11 seats nearby to use during a lull in tasks that do require moving about or standing. In
12 violation of California Labor Code and applicable IWC Wage Order, Defendants failed to
13 provide Plaintiff and/or class members with suitable seating.

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

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

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 39. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for

1 violations of the California Labor Code and applicable IWC Wage Order may, as an
2 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
3 themselves and other current or former employees pursuant to procedures outlined in
4 California Labor Code section 2699.3

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

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

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

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

1 to California Labor Code section 2699 to recover civil penalties.

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

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

11 (b) An aggrieved employee's notice filed with the LWDA pursuant to
12 2699.3(c) and any employer response to that notice shall be
13 accompanied by a filing fee of seventy-five dollars (\$75).

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

23 44. On February 22, 2024, Plaintiff provided written notice by online filing to the
24 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
25 Code alleged to have been violated, including facts and theories to support the alleged
26 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
27 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
28 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned

1 Plaintiff PAGA Case Number LWDA-CM-1012654-24. A true and correct copy of Plaintiff's
2 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

6 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
7 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
8 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
9 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

25 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for himself, all
28 other aggrieved employees, and the State of California against Defendants for violations of

California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

- 1 members;
- 2 (c) Whether Defendants failed to pay Plaintiff and class members at least
- 3 minimum wages for all hours worked;
- 4 (d) Whether Defendants failed to provide Plaintiff and class members with
- 5 meal periods;
- 6 (e) Whether Defendants failed to authorize and permit Plaintiff and class
- 7 members to take rest periods;
- 8 (f) Whether Defendants provided Plaintiff and class members with
- 9 complete and accurate wage statements as required by California Labor
- 10 Code section 226(a);
- 11 (g) Whether Defendants maintained accurate payroll records as required by
- 12 California Labor Code section 1174(d);
- 13 (h) Whether Defendants failed to pay earned overtime wages, minimum
- 14 wages, and/or meal and rest period premiums due to Plaintiff and class
- 15 members upon their discharge;
- 16 (i) Whether Defendants failed timely to pay overtime wages, minimum
- 17 wages, and/or meal and rest period premiums due to Plaintiff and class
- 18 members during their employment;
- 19 (j) Whether Defendants failed to properly calculate the regular rate of pay
- 20 upon which Plaintiff's and/or class members' sick leave rate of pay was
- 21 based;
- 22 (k) Whether Defendants failed to provide Plaintiff and/or class members
- 23 with suitable seating;
- 24 (l) Whether Defendants failed to reimburse Plaintiff and class members for
- 25 necessary and required business-related expenditures and/or losses
- 26 incurred by them in the scope of their employment;
- 27 (m) Whether Defendants engaged in unlawful and unfair business practices
- 28 in violation of California Business & Professions Code sections 17200,

1 *et seq.*; and

- 2 (n) The appropriate amount of damages, restitution, or monetary penalties
3 resulting from Defendants' violations of California law.

4 58. There is a well-defined community of interest in the litigation and the class
5 members are readily ascertainable:

- 6 (a) Numerosity: The class members are so numerous that joinder of all
7 members would be unfeasible and impractical. The membership of the
8 entire class is unknown to Plaintiff at this time; however, the class is
9 estimated to be greater than one hundred (100) individuals and the
10 identity of such membership is readily ascertainable by inspection of
11 Defendants' employment records.
- 12 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
13 protect the interests of each class member with whom he has a well-
14 defined community of interest, and Plaintiff's claims (or defenses, if
15 any) are typical of all class members as demonstrated herein.
- 16 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
17 protect the interests of each class member with whom he has a well-
18 defined community of interest and typicality of claims, as demonstrated
19 herein. Plaintiff acknowledges that he has an obligation to make known
20 to the Court any relationship, conflicts or differences with any class
21 member. Plaintiff's attorneys, the proposed class counsel, are versed in
22 the rules governing class action discovery, certification, and settlement.
23 Plaintiff has incurred, and throughout the duration of this action, will
24 continue to incur costs and attorneys' fees that have been, are, and will
25 be necessarily expended for the prosecution of this action for the
26 substantial benefit of each class member.
- 27 (d) Superiority: The nature of this action makes the use of class action
28 adjudication superior to other methods. A class action will achieve

economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

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

FIRST CAUSE OF ACTION

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

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

60. 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.”

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

62. Specifically, the applicable IWC Wage Order provides that Defendants are and

1 were required to pay Plaintiff and class members working more than eight (8) hours in a day
2 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
3 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
4 workweek.

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

10 64. California Labor Code section 510 codifies the right to overtime compensation
11 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
12 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
13 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
14 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
15 in a day on the seventh (7th) day of work.

16 65. During the relevant time period, Defendants willfully failed to pay all overtime
17 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
18 class members were not paid overtime premiums for all of the hours they worked in excess of
19 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
20 hours in a week, because all hours worked were not recorded.

21 66. First, during the relevant time period, Defendants had, and continue to have, a
22 company-wide policy and/or practice of requiring Plaintiff and class members to perform
23 work off-the-clock before and after their shifts, such as traveling to a store to pick up
24 restaurant supplies, answering work-related phone calls, completing closing duties, attending
25 mandatory meetings, and submitting to COVID-19 health screenings. For example, once per
26 week, before he was permitted to clock in for his scheduled shift, Plaintiff was required to
27 travel to a store to purchase necessary supplies for the restaurant, which would usually take
28 him about 20 minutes to obtain. Further, once per week and approximately for 20 to 30

1 minutes, Plaintiff was required to answer work-related phone calls before his shifts and handle
2 any scheduling and staffing issues such as other employees calling out and having to find
3 coverage for those employees. Furthermore, Defendants implemented, on a company-wide
4 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
5 COVID-19 temperature checks and/or health screenings before clocking in for their scheduled
6 shifts. Prior to his shift, Plaintiff was required to spend time undergoing a mandatory
7 temperature check before being permitted to clock in. As a further example, Plaintiff had to
8 complete closing duties after clocking out from his shifts, such as completing walk-throughs
9 of the restaurant, turning off the lights, and locking the doors which would take about 10
10 minutes each instance. Finally, Defendants' managers required Plaintiff to travel to and
11 attend managerial meetings to discuss any issues, new menus, and specials, which would take
12 up to 2.5 hours every two months. Thus, Defendants required Plaintiff and class members to
13 work off-the-clock and did not compensate them for this time worked.

14 67. Second, Defendants had, and continue to have, a company-wide policy of
15 strictly staffing their restaurant locations based on the labor hours allocated by each location's
16 labor or payroll budget set by the corporate office. This practice of labor budgeting and/or
17 limited payroll allocation, combined with the assignment of heavy workloads, has resulted in
18 chronic understaffing and a lack of adequate meal period coverage, because there were too
19 few employees on duty to handle the workload. Defendants also had a practice of failing to
20 schedule meal periods which, in conjunction with the assignment of heavy workloads, further
21 caused Plaintiff and class members to not be relieved of their duties for compliant meal
22 periods. As a result of this lack of meal period coverage, Plaintiff and class members were
23 not always afforded uninterrupted 30-minute meal periods during shifts when they were
24 entitled to receive a meal period. For example, Plaintiff worked through a majority of his
25 meal periods entirely when he was the manager on duty because he was pressured to continue
26 working and oversee the restaurant operations. Consequently, Plaintiff and class members
27 performed work during meal periods for which they were not paid.

28 68. Defendants knew or should have known that as a result of these company-wide

1 practices and/or policies, Plaintiff and class members were performing their assigned duties
2 off-the-clock and during meal periods, and were suffered or permitted to perform work for
3 which they were not paid. Because Plaintiff and class members sometimes worked shifts of
4 eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock
5 work qualified for overtime premium pay. Therefore, Plaintiff and class members were not
6 paid overtime wages for all of the overtime hours they actually worked.

7 69. Moreover, Defendants did not pay Plaintiff and class members the correct
8 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
9 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
10 and/or other forms of remuneration. However, in violation of the California Labor Code, on
11 information and belief, Defendants failed to incorporate all compensation, including incentive
12 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
13 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
14 times when Plaintiff and class members worked overtime and received these other forms of
15 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
16 required.

17 70. For example, Defendants paid Plaintiff and class members incentive pay and/or
18 nondiscretionary bonuses which were listed on Plaintiff's and class members' wage
19 statements as "Bonus." During pay periods that Plaintiff and class members were paid
20 overtime wages, Defendants did not incorporate these payments into Plaintiff's and class
21 members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for
22 overtime hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times
23 their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to
24 properly calculate the overtime rates of pay based on all remuneration paid has resulted in an
25 underpayment of overtime wages to Plaintiff and class members on a company-wide basis.
26 Defendants' failure to pay Plaintiff and class members the balance of overtime compensation
27 as required by California law, violates the provisions of California Labor Code sections 510
28 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are

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

SECOND CAUSE OF ACTION

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

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

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

73. First, as set forth above, Defendants had a company-wide policy and/or practice requiring Plaintiff and class members to perform work while off-the-clock before and after their shifts, including driving to the store to pick up supplies, answering phone calls, submitting to COVID-19 health screenings, completing closing duties, and attending meetings. Defendants failed to track this time Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

74. Second, as set forth above, due to Defendants' company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Plaintiff and class members were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. As a result, Plaintiff and class members were not afforded timely, uninterrupted thirty (30) minute meal

1 periods during shifts in which they were entitled to receive meal periods. Defendants did not
2 pay Plaintiff and class members for the time they continued to perform tasks during meal
3 periods.

4 75. Defendants did not pay minimum wages for all hours worked by Plaintiff and
5 class members. To the extent that these off-the-clock hours did not qualify for overtime
6 premium payment, Defendants did not pay at least minimum wages for those hours worked
7 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
8 1198.

9 76. Defendants' failure to pay Plaintiff and class members minimum wages violates
10 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
11 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
12 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
13 interest thereon.

14 **THIRD CAUSE OF ACTION**

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

16 **Violations**

17 **(Against all Defendants)**

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

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

27 79. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), 516, and 1198 provide that no employer shall require an employee to work during any

1 meal period mandated by an applicable order of the IWC.

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

9 81. Under California law, an employer cannot evade meal period requirements via
10 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*
11 *Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be
12 provided with the opportunity to eat his or her meal while performing the duties required and
13 any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long.
14 *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141
15 (2019).

16 82. During the relevant time period, Defendants had, and continue to have, a
17 company-wide policy and/or practice of understaffing locations due to labor budgeting and/or
18 limited payroll allocation, which, combined with the assignment of heavy workloads, and
19 failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented
20 Plaintiff and class members from taking all timely, uninterrupted meal periods to which they
21 were entitled. In conjunction with understaffing their restaurants, Defendants had a
22 requirement that a managerial employee be present on the restaurant floor at all times, but
23 Defendants' labor budgets did not always allow for more than one manager to be on the
24 schedule at all times. As a result, Plaintiff and class members were sometimes the only
25 managers on duty and would work through their meal periods in order to assist their
26 coworkers and customers.

27 83. As a result, Plaintiff and class members had to work through all or part of their
28 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time

1 before taking meal periods. For example, as stated, Plaintiff regularly missed his meal periods
2 entirely when he was the manager on duty because he was pressured to continue working and
3 oversee the restaurant operations. Whenever Plaintiff had an opportunity to take his meal
4 periods, he took them late, after the sixth hour of work, due to the heavy workload.

5 84. Furthermore, during the relevant time period, Defendants maintained and
6 implemented an improper company-wide on-duty meal period policy. Defendants' "Meal
7 Waiver/ Wavier [sp] of On Duty Meal/Rest Period" states, in relevant part, "The Employee
8 and [Defendants] . . . agree that the nature of the Employee's work prevents the Employee
9 from being relieved of all duty during the Employee's meal/rest period. It is also agreed that
10 Employee shall work an on-the-job meal/rest period that will be paid for by the Employer."

11 85. Under California law, an on-duty meal period agreement does not absolve
12 employers of the duty to provide timely, 30-minute meal periods.¹ Defendants' on-duty meal
13 policy failed to inform Plaintiff and class members that they are entitled to a 30-minute on-
14 duty meal period and that on-duty meal periods must be timely, and therefore is facially
15 invalid. Moreover, under California law, "on-duty" meal periods are a limited alternative to
16 the requirement to provide off-duty meal periods and can only be utilized under certain
17 circumstances. IWC Wage Order 5-2001, subdivision 11(A) provides that an "on duty" meal
18 period "shall be permitted only when the nature of the work prevents an employee from being
19 relieved of all duty and when by written agreement between the parties an on-the-job paid
20 meal period is agreed to. The written agreement shall state that the employee may, in writing,
21 revoke the agreement at any time."

22 86. Defendants' "on-duty" meal period policy results from the company's own
23

24 ¹ Employers must provide employees a timely 30-minute meal period even though that
25 meal period may be on-duty instead of off-duty. See *L'Chaim*, 38 Cal. App. 5th at 149 ("If an
26 employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on
27 a portion of that time, the off-duty period is converted to an on-duty period—no matter how
28 small the portion of the period that work intruded upon—and the employee is paid for the
entire period. There is no suggestion that once work interrupts an employee's meal period, the
period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal
period is not the functional equivalent of no meal period at all. On-duty meal periods are an
intermediate category requiring more of employees than off-duty meal periods but less of
employees than their normal work.").

1 staffing and business decisions, not because the nature of the work required on-duty meal
2 periods. The work of Defendants' employees is not of the kind that could be said to meet the
3 "nature of the work" exception. Plaintiff and class members worked at a restaurant, serving
4 food and attending to customers. None of these tasks is akin to the kind that the California
5 Division of Labor Standards Enforcement ("DLSE") has found warrant an "on-duty" meal
6 period, such as transporting hazardous materials via vehicles that must be monitored at all
7 times pursuant to federal regulation.

8 87. Furthermore, Defendants did not provide Plaintiff and class members with a
9 written "on duty" meal period agreement that stated that the employee could revoke the
10 agreement in writing at any time. Instead, Defendants' "Meal Waiver/ Wavier [sp] of On
11 Duty Meal/Rest Period" form states that the agreement may be revoked "on providing my
12 supervisor **at least one day's (24 hours) notice of my intent to do so.**" (Emphasis added.)
13 Therefore, Defendants' use of an "on-duty" meal period agreement is improper and unlawful.
14 Because of Defendants' company-wide "on-duty" meal period policy, Plaintiff and class
15 members did not receive all required off-duty meal periods and did not receive premium pay
16 for missed, late, or interrupted meal periods.

17 88. To the extent that Defendants' "Meal Waiver/ Wavier [sp] of On Duty
18 Meal/Rest Period" functioned as a blanket meal period waiver for off-duty meal periods, it is
19 invalid as it does not specify that employees are able to waive their meal periods when they
20 work shifts of more than five (5) hours, only when they do not work more than six (6) hours in
21 a day, or that they are able to waive their second meal periods when working shifts of more
22 than 10 hours, only if they work no more than 12 hours and their first meal period was taken.
23 Defendants, on information and belief, do not have any policies with respect to providing
24 Plaintiff and class members with compliant meal periods, pursuant to IWC Wage Order No. 5-
25 2001.

26 89. Moreover, Defendants did not provide Plaintiff and class members with second
27 30-minute meal periods on days that they worked in excess of 10 hours in one day. For
28 example, during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one

1 day approximately once a week and never took a second meal period. Plaintiff and class
2 members did not sign valid meal period waivers on days that they were entitled to meal
3 periods and were not relieved of all duties.

4 90. At all times herein mentioned, Defendants knew or should have known that, as
5 a result of these policies, Plaintiff and class members were prevented from being relieved of
6 all duties and required to perform some of their assigned duties during meal periods.
7 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
8 members meal period premiums when meal periods were missed, shortened, interrupted,
9 and/or late.

10 91. Furthermore, Defendants engaged in a company-wide practice and/or policy of
11 not paying all meal period premiums owed when compliant meal periods are not provided.
12 Because of this practice and/or policy, Plaintiff and class members have not received premium
13 pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that
14 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
15 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
16 premiums because Defendants systematically failed to include all forms of compensation,
17 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, or a
18 second, higher rate of pay, in the regular rate of pay. As a result, Defendants failed to provide
19 Plaintiff and class members compliant meal periods in violation of California Labor Code
20 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

25 **FOURTH CAUSE OF ACTION**

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

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

1 and every allegation set forth above.

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

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

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

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

1 permitted to take rest periods.

2 98. Moreover, Defendants had a company-wide policy of requiring all employees
3 to sign blanket rest period waivers (“Meal Waiver/ Wavier [sp] of On Duty Meal/Rest
4 Period”). Defendants took the position that non-exempt, hourly paid employees had waived
5 their rights to rest periods for the entirety of their employment and, on that basis, did not
6 provide them with all rest periods to which they were entitled. Defendants’ presumption that
7 rest periods would not be provided at all due to blanket rest period waivers signed at or near
8 the time of hire, discouraged and impeded Plaintiff and class members from taking all rest
9 periods to which they were entitled.

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

16 100. As a result of Defendants’ practices and policies, Plaintiff and class members
17 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
18 receiving all uninterrupted rest periods to which they were entitled. For example, throughout
19 his employment, Plaintiff had to forego his rest periods entirely during each shift because the
20 restaurant was busy, did not have coverage, and there was an expectation for all employees to
21 work through their rest periods.

22 101. Defendants have also engaged in a systematic, company-wide practice and/or
23 policy of not paying rest period premiums owed when rest periods are not authorized and
24 permitted. Because of this practice and/or policy, Plaintiff and class members have not
25 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
26 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
27 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
28 premiums because Defendants failed to include all forms of compensation, such as incentive

1 pay, nondiscretionary bonuses, and/or other forms of remuneration, or a second, higher rate of
2 pay in the regular rate of pay. As a result, Defendants denied Plaintiff and class members rest
3 periods and failed to pay them rest period premiums due, in violation of Labor Code sections
4 226.7 and 516, and the applicable IWC Wage Order.

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

10 **FIFTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 12 **Statements and Failure to Maintain Accurate Payroll Records** 13 **(Against all Defendants)**

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

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

21 105. At all relevant times, Defendants have knowingly and intentionally provided
22 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
23 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
24 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
25 applicable hourly rates in effect during the pay period, including overtime rates of pay and/or
26 meal and rest period premiums, and the corresponding number of hours worked at each hourly
27 rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

28 106. Because Defendants did not accurately record the time Plaintiff and Subclass

1 members spent working off-the-clock, Defendants did not list the correct amount of gross
2 wages and net wages earned by Plaintiff and Subclass members in compliance with section
3 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
4 number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2),
5 and failed to list the applicable hourly rates of pay in effect during the pay period and
6 corresponding accurate number of work hours worked at each hourly rate in violation of
7 section 226(a)(9).

8 107. In addition, because Defendants did not calculate Plaintiff's and Subclass
9 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
10 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
11 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of
12 net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
13 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
14 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

15 108. The wage statement deficiencies also include, without limitation, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
18 for which employees were paid; failing to list the name of the employee and only the last four
19 digits of his or her social security number or an employee identification number other than a
20 social security number; failing to list the name and address of the legal entity that is the
21 employer; and/or failing to state all hours worked as a result of not recording or stating hours
22 worked off-the-clock. In addition, Defendants failed to provide Plaintiff and class members
23 the option to elect to receive hard copies of their wage statements at any time and/or failed to
24 provide them with the ability to easily access the information and convert the electronic wage
25 statements into hard copies at no expense to them.

26 109. California Labor Code section 1174(d) provides that "[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or
4 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
5 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
6 members showing the daily hours they worked and the wages paid thereto as a result of failing
7 to record the off-the-clock hours that they worked.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Code section 204.

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

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses

(Against all Defendants)

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

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

126. First, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and class members use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiff and class members used their personal mobile devices to make and receive work-related phone calls pertaining to shift coverage and any issues at the restaurant. Further, Plaintiff used his personal mobile phone to place orders for the bar and the kitchen and to communicate with Defendants' management via email. Additionally, Plaintiff and class

1 members used their personal mobile phones to download and access the CrewApp mobile
2 application to access their schedules. Although Defendants required Plaintiff and class
3 members to utilize their personal mobile devices and/or mobile data to carry out their work-
4 related responsibilities, Defendants failed to reimburse them for these costs.

5 127. Second, during the relevant time period, Defendants, on a company-wide basis,
6 required that Plaintiff and class members use their own personal vehicles to run company
7 errands. For example, about once a week, Plaintiff was required to use his personal vehicle
8 and drive to a store to pick up necessary supplies for the restaurant. Additionally, every two
9 months, Plaintiff was required to use his personal vehicle to drive to another one of
10 Defendants' locations to attend mandatory meetings. Although Defendants required Plaintiff
11 and class members to utilize their personal vehicles to carry out their work-related
12 responsibilities, Defendants failed to reimburse them for their mileage or travel expenses.

13 128. Third, during the relevant time period, Defendants, on a company-wide basis,
14 required Plaintiff and class members to obtain and pay for certain certifications, such as a
15 ServSafe certificate, which were required for their continued employment, as well as
16 associated costs such as training and/or examination fees. For example, Plaintiff complied
17 with this requirement and spent approximately \$20 to obtain a ServSafe certificate, but
18 Defendants did not reimburse him for the costs of obtaining the certification. Thus,
19 Defendants failed to reimburse Plaintiff and class members for the costs of obtaining these
20 certifications, including training and/or examination fees.

21 129. Defendants could have provided Plaintiff and class members with the actual
22 equipment for use on the job, such as company mobile devices and company vehicles; or
23 Defendants could have reimbursed employees for the costs of their mobile device usage,
24 mileage, travel expenses, and certifications. Instead, Defendants passed these operating costs
25 off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two
26 (2) times the minimum wage.

27 130. Defendants' company-wide policy and/or practice of not reimbursing
28 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff

1 and class members violates California Labor Code section 2802. Defendants have
2 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
3 business-related expenses and costs.

4 131. Plaintiff and class members are entitled to recover from Defendants their
5 business-related expenses incurred during the course and scope of their employment, plus
6 interest.

7 **NINTH CAUSE OF ACTION**

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

9 **(Against all Defendants)**

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

12 133. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
13 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
14 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7, 510,
15 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
16 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
17 Code sections not found in section 2699.5, including sections 246, 516, and 1182.12.

18 134. Defendants’ conduct, as alleged herein, violates numerous sections of the
19 California Labor Code, including, but not limited to, the following:

- 20 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
21 Wage Order for Defendants’ failure to compensate Plaintiff and other
22 aggrieved employees with all required overtime pay, as alleged herein;
- 23 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
24 applicable IWC Wage Order for Defendants’ failure to include all forms
25 of remuneration in the regular rate of pay as required by law for
26 purposes of paying overtime wages and/or meal and rest period
27 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 28 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and

1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;

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

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

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

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

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

(j) Violation of Labor Code Section 246 for failure to properly calculate the sick leave paid to other aggrieved employees, as set forth below;

(k) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating, as set forth below; and

(l) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein and set forth below.

135. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,

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

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

22 137. Defendants’ failure to properly calculate the sick leave rates of pay based on all
23 remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved
24 employees on a company-wide basis in violation of California Labor Code section 246(l).
25 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
26 Code sections 248.5 and/or 2699(a), (f), and (g).

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

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

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

8 140. Defendants’ restaurants are generally similar in their layout and design and
9 there was, and continues to be, space behind host stands to allow for the presence and use of a
10 seat or stool by other aggrieved employees (with reasonable or no modification to these work
11 areas) during the performance of their work duties. Defendants could have provided other
12 aggrieved employees with a seat or stool at their host stands, but instead denied employees
13 seating and forced other aggrieved employees to stand throughout the day.

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

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

25 143. As a result of Defendants’ company-wide policy and/or practice of prohibiting
26 employees from sitting during their shifts and company-wide failure to provide suitable
27 seating, other aggrieved employees were forced to stand during shifts and denied seats.
28 Defendants’ failure to provide suitable seating to other aggrieved employees violates

1 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).
2 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
3 Code sections 2699(a), (f), and (g).

4 144. 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.”

9 145. 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 aggrieved employees were not allowed to sit, even during lulls in their work duties, nor were
12 they provided with suitable seats in reasonable proximity to their work areas.

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

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

26 148. As a result of Defendants’ company-wide policy and/or practice of prohibiting
27 employees from sitting at any time, even when they were not engaged in active duties
28 requiring standing, and company-wide failure to provide seats in reasonable proximity to their

1 work areas, other aggrieved employees were forced to stand during shifts and denied seats.
2 Defendants' failure to provide suitable seating to other aggrieved employees violates
3 California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).
4 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
5 Code sections 2699(a), (f), and (g).

6 149. At all relevant times herein, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). IWC Wage Order No. 7-2001 provides that: "[w]hen uniforms are required by the
12 employer to be worn by the employee as a condition of employment, such uniforms shall be
13 provided and maintained by the employer."

14 150. During the relevant time period, Defendants, on a company-wide basis,
15 expected employees to report to work in clean and presentable uniforms bearing the company
16 logo, including a shirt. However, Defendants did not provide their employees with a
17 sufficient number of uniforms to wear for their shifts throughout the week. Defendants only
18 provided other aggrieved employees with three (3) shirts at the time of hire. Because
19 Defendants failed to provide their employees with an adequate number of uniforms in relation
20 to their scheduled shifts and for the tasks they were required to perform, other aggrieved
21 employees were forced to pay out-of-pocket for some of their uniform items. For example,
22 other aggrieved employees spent approximately \$10 out-of-pocket to purchase each additional
23 uniform shirt from Defendants. Since Defendants did not provide an adequate number of
24 uniform components to all employees, other aggrieved employees were required to purchase
25 additional uniform items, such as shirts, directly from Defendants, and were not reimbursed
26 for these costs.

27 151. Defendants could have provided other aggrieved employees with the actual
28 equipment for use on the job, such as an adequate number of uniform items, or, Defendants

1 could have reimbursed employees for the costs of additional uniforms. Instead, Defendants
2 passed these operating costs off onto other aggrieved employees.

3 152. Defendants' company-wide policy and/or practice of not reimbursing
4 employees for expenses necessarily incurred and passing on their operating costs to other
5 aggrieved employees violates California Labor Code section 2802. Other aggrieved
6 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 2699(a), (f), and (g),

8 **TENTH CAUSE OF ACTION**

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

10 **Unlawful Business Practices**

11 **(Against all Defendants)**

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

14 154. Defendants are "persons" as defined by California Business & Professions
15 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

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

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

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

28 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and

1 class members, to work overtime without paying them proper
2 compensation in violation of California Labor Code sections 510 and
3 1198, and the applicable IWC Wage Order, as alleged herein;

4 (b) Failing to include all forms of remuneration in the regular rate of pay as
5 required by law for purposes of paying overtime wages and/or meal and
6 rest period premiums to Plaintiff and class members, in violation of
7 California Labor Code sections 226.7, 510, and 1198, and the applicable
8 IWC Wage Order, as alleged herein;

9 (c) Failing to pay at least minimum wage to Plaintiff and class members in
10 violation of California Labor Code sections 1182.12, 1194, 1197,
11 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
12 herein;

13 (d) Failing to provide all meal periods to Plaintiff and class members in
14 violation of California Labor Code sections 226.7, 512(a), 516, and
15 1198, and the applicable IWC Wage Order, as alleged herein;

16 (e) Failing to authorize and permit Plaintiff and class members to take all
17 rest periods in violation of California Labor Code sections 226.7, 516,
18 and 1198, and the applicable IWC Wage Order, as alleged herein;

19 (f) Failing to provide Plaintiff and class members with accurate wage
20 statements and failing to maintain accurate payroll records in violation
21 of California Labor Code sections 226(a), 1174(d), and 1198, and the
22 applicable IWC Wage Order, as alleged herein;

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

25 (h) Failing to reimburse Plaintiff and class members for all business
26 expenses necessarily incurred in violation of California Labor Code
27 section 2802, as alleged herein.

28 158. As a result of the violations of California law herein described, Defendants

1 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
2 have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged
3 herein.

4 159. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
5 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
6 Defendants during a period that commences four years prior to the filing of this complaint; a
7 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
8 class members; and an award of attorneys’ fees pursuant to California Code of Civil
9 Procedure section 1021.5 and other applicable laws; and an award of costs.

10 **ELEVENTH CAUSE OF ACTION**

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

12 **Unfair Business Practices**

13 **(Against all Defendants)**

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

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

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

24 163. Defendants’ activities, namely Defendants’ company-wide practice and/or
25 policy of not paying Plaintiff and class members all meal and rest period premiums due to
26 them under Labor Code section 226.7, deprived Plaintiff and class members of the
27 compensation guarantee and enhanced enforcement implemented by section 226.7. The
28 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to

1 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
2 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
3 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
4 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
5 unfair business practice in violation of California Business & Professions Code sections
6 17200, *et seq.* (*Id.*)

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

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

18 **REQUEST FOR JURY TRIAL**

19 Plaintiff requests a trial by jury.

20 **PRAYER FOR RELIEF**

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

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

26 **Class Certification**

27 2. That this case be certified as a class action;

28 3. That Plaintiff be appointed as the representative of the Class and Subclass;

1 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

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

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

18 11. For general unpaid wages and such general and special damages as may be
19 appropriate;

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

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

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

25 15. For such other and further relief as the Court may deem equitable and
26 appropriate.

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

28 16. That the Court declare, adjudge, and decree that Defendants violated California

1 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
2 willfully failing to provide all meal periods to Plaintiff and class members;

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

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

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

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

11 21. For attorneys' fees pursuant to California Code of Civil Procedure section
12 1021.5, or as otherwise provided by law; and

13 22. For such other and further relief as the Court may deem equitable and
14 appropriate.

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

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

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

22 25. For all actual, consequential, and incidental losses and damages, according to
23 proof;

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

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

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

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

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

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

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

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

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

8 43. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 44. For statutory penalties according to proof pursuant to California Labor Code
11 section 210;

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

14 46. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 47. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

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

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

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

26 51. For all actual, consequential, and incidental losses and damages, according to
27 proof;

28 52. For attorneys' fees and costs pursuant to California Labor Code section

2802(c), or as otherwise provided by law; and

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

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 246 (by failing to properly calculate sick leave pay); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); and 2802 (by failing to reimburse business expenses);

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

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

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

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

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As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

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

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

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

As to the Eleventh Cause of Action

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

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

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

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

10 68. For pre-judgment and post-judgment interest as provided by law; and
11 For such other and further relief as the Court may deem equitable and appropriate.
12

13 Dated: April 30, 2024

Respectfully submitted,

Capstone Law APC

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16 By: _____

Orlando Villalba

Helga Hakimi

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Attorneys for Plaintiff Mauricio Olmedo
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EXHIBIT “1”

NINEL KOCHARYAN
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February 22, 2024

VIA ONLINE SUBMISSION

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

Subject: *Mauricio Olmedo v. Yolanda's of Simi Valley, Inc., et al.*

Dear PAGA Administrator:

This office represents Mauricio Olmedo in connection with his claims under the California Labor Code. Mr. Olmedo was an employee of YOLANDA'S OF SIMI VALLEY, INC.; YOLANDA'S INC.; YOLANDA'S OF CAMARILLO, INC.; and/or YOLANDA'S OF VENTURA, INC. For the purpose of this letter, Mr. Olmedo collectively refers to these entities as "YSV."

The employers may be contacted directly at the addresses below:

YOLANDA'S OF SIMI VALLEY, INC.
590 E. LOS ANGELES AVE
SIMI VALLEY, CA 93065

YOLANDA'S OF SIMI VALLEY, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

YOLANDA'S, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

YOLANDA'S OF CAMARILLO, INC.
86 DAILY DR
CAMARILLO, CA 93010

YOLANDA'S OF CAMARILLO, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

YOLANDA'S OF VENTURA, INC.
2753 E. MAIN ST.
VENTURA, CA 93003

YOLANDA'S OF VENTURA, INC.
1363 DONLON STREET, STE. 20
VENTURA, CA 93003

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

YSV employed Mr. Olmedo as an hourly paid, non-exempt Bartender/Server, Assistant Manager, and General Manager from approximately July 2000 to September 2023. Mr. Olmedo worked for YSV at its restaurant location in Simi Valley, California. During his employment, Mr. Olmedo typically worked six (6) to ten (10) hours per day and six (6) days per week. At the time his employment ended, Mr. Olmedo was compensated approximately \$32.00 per hour. His primary job duties included, without limitation, creating schedules, placing orders for the bar and the kitchen, attending meetings, providing customer service, and managing restaurant operations.

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

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

YOLANDA’S OF SIMI VALLEY, INC.; YOLANDA’S INC.; YOLANDA’S OF CAMARILLO, INC.; and YOLANDA’S OF VENTURA, INC. are California corporations. Together, they operate a chain of family-owned Mexican restaurants with at least four (4) locations in California. Upon information and belief, YSV maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Ventura, California, for all non-exempt, hourly paid employees working for YSV in California, including Mr. Olmedo and other aggrieved employees. At all relevant times, YSV issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Olmedo and other aggrieved employees, regardless of their location or position.

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

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

YSV willfully failed to pay all overtime wages owed to Mr. Olmedo and other aggrieved employees. During the relevant time period, Mr. Olmedo and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, YSV had, and continues to have, a company-wide policy and/or practice of requiring Mr. Olmedo and other aggrieved employees to perform work off-the-clock before and after their shifts, such as traveling to a store to pick up restaurant supplies, answering work-related phone calls, completing closing duties, attending mandatory meetings, and submitting to COVID-19 health screenings. For example, once per week, before he was permitted to clock in for his scheduled shift, Mr. Olmedo was required to travel to a store to purchase necessary supplies for the restaurant, which would usually take him about 20 minutes to obtain. Further, once per week and approximately for 20 to 30 minutes, Mr. Olmedo was required to answer work-related phone calls before his shifts and handle any scheduling and staffing issues such as other employees calling out and having to find coverage for those employees. Furthermore, YSV implemented, on a company-wide basis, an employer-imposed requirement that Mr. Olmedo and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to his shift, Mr. Olmedo was required to spend time undergoing a mandatory temperature check before being permitted to clock in. As a further example, Mr. Olmedo had to complete closing duties after clocking out from his shifts, such as completing walk-throughs of the restaurant, turning off the lights, and locking the doors, which would take about 10 minutes each instance. Finally, YSV's managers required Mr. Olmedo to travel to and attend managerial meetings to discuss any issues, new menus, and specials, which would take up to 2.5 hours every two months. Thus, YSV required Mr. Olmedo and other aggrieved employees to work off-the-clock and did not compensate them for this time worked.

Second, YSV had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. YSV also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Olmedo and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Mr. Olmedo and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Olmedo worked through a majority of his meal periods entirely when he was the manager on duty because he was pressured to continue working and oversee the restaurant operations. Consequently, Mr. Olmedo and other aggrieved employees performed work during meal periods for which they were not paid.

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

Moreover, YSV did not pay Mr. Olmedo and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, YSV paid Mr. Olmedo and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.

However, in violation of the California Labor Code, on information and belief, YSV 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 Mr. Olmedo and other aggrieved employees worked overtime and received these other forms of pay, YSV failed to pay all overtime wages by paying a lower overtime rate than required.

For example, YSV paid Mr. Olmedo and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Mr. Olmedo's and other aggrieved employees' wage statements as "Bonus." During pay periods that Mr. Olmedo and other aggrieved employees were paid overtime wages, YSV did not incorporate these payments into Mr. Olmedo's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, YSV paid Mr. Olmedo and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. YSV's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Olmedo and other aggrieved employees on a company-wide basis.

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

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

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

First, as set forth above, YSV had a company-wide policy and/or practice requiring Mr. Olmedo and other aggrieved employees to perform work while off-the-clock before and after their shifts, including driving to the store to pick up supplies, answering phone calls, submitting to COVID-19 health screenings, completing closing duties, and attending meetings. YSV failed to track this time Mr. Olmedo and other aggrieved employees spent working off-the-clock, and Mr. Olmedo and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to YSV's company-wide practice of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and/or subsequent lack of meal period coverage, Mr. Olmedo and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. As a result, Mr. Olmedo and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. YSV did not pay Mr. Olmedo and other aggrieved employees for the time they continued to perform tasks during meal periods.

Accordingly, YSV regularly failed to pay at least minimum wages to Mr. Olmedo 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. Olmedo 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.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

During the relevant time period, YSV had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Olmedo and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its restaurants, YSV had a requirement that a managerial employee be present on the restaurant floor at all times, but YSV's labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Mr. Olmedo and other aggrieved employees were sometimes the only managers on duty and would work through their meal periods in order to assist their coworkers and customers.

As a result, Mr. Olmedo 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, as stated, Mr. Olmedo regularly missed his meal periods entirely when he was the manager on duty because he was pressured to continue working and oversee the restaurant operations. Whenever Mr. Olmedo had an opportunity to take his meal periods, he took them late, after the sixth hour of work, due to the heavy workload.

Furthermore, during the relevant time period, YSV maintained and implemented an improper company-wide on-duty meal period policy. YSV's "Meal Waiver/ Wavier [sp] of On Duty Meal/Rest Period" states, in relevant part, "The Employee and [YSV] . . . agree that the nature of the Employee's work

prevents the Employee from being relieved of all duty during the Employee's meal/rest period. It is also agreed that Employee shall work an on-the-job meal/rest period that will be paid for by the Employer."

Under California law, an on-duty meal period agreement does not absolve employers of the duty to provide timely, 30-minute meal periods.² YSV's on-duty meal policy failed to inform Mr. Olmedo and other aggrieved employees that they are entitled to a 30-minute on-duty meal period and that on-duty meal periods must be timely, and therefore is facially invalid. Moreover, under California law, "on-duty" meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 5-2001, subdivision 11(A) provides that an "on duty" meal period "shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."

YSV's "on-duty" meal period policy results from the company's own staffing and business decisions, not because the nature of the work required on-duty meal periods. The work of YSV's employees is not of the kind that could be said to meet the "nature of the work" exception. Mr. Olmedo and other aggrieved employees worked at a restaurant, serving food and attending to customers. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement ("DLSE") has found warrant an "on-duty" meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation.

Furthermore, YSV did not provide Mr. Olmedo and other aggrieved employees with a written "on duty" meal period agreement that stated that the employee could revoke the agreement in writing at any time. Instead, YSV's "Meal Waiver/ Wavier [sp] of On Duty Meal/Rest Period" form states that the agreement may be revoked "on providing my supervisor **at least one day's (24 hours) notice of my intent to do so.**" (Emphasis added.) Therefore, YSV's use of an "on-duty" meal period agreement is improper and unlawful. Because of YSV's company-wide "on-duty" meal period policy, Mr. Olmedo and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

To the extent that YSV's "Meal Waiver/ Wavier [sp] of On Duty Meal/Rest Period" functioned as a blanket meal period waiver for off-duty meal periods, it is invalid as it does not specify that employees are able to waive their meal periods when they work shifts of more than five (5) hours, only when they do not work more than six (6) hours in a day, or that they are able to waive their second meal periods when working shifts of more than 10 hours, only if they work no more than 12 hours and their first meal period was taken. YSV, on information and belief, does not have any policies with respect to providing Mr. Olmedo and other aggrieved employees with compliant meal periods, pursuant to IWC Wage Order No. 5-2001.

Moreover, YSV did not provide Mr. Olmedo and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time

² Employers must provide employees a timely 30-minute meal period even though that meal period may be on-duty instead of off-duty. See *L'Chaim*, 38 Cal. App. 5th at 149 ("If an employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on a portion of that time, the off-duty period is converted to an on-duty period—no matter how small the portion of the period that work intruded upon—and the employee is paid for the entire period. There is no suggestion that once work interrupts an employee's meal period, the period simply ends even if 30 minutes have not yet passed.") and 147 ("[A]n on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal periods are an intermediate category requiring more of employees than off-duty meal periods but less of employees than their normal work.").

period, Mr. Olmedo worked shifts in excess of 10 hours in one day approximately once a week and never took a second meal period. Mr. Olmedo and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Furthermore, YSV engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Olmedo and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that YSV did pay Mr. Olmedo and other aggrieved employees premium pay for missed, late, and interrupted meal periods, YSV did not pay Mr. Olmedo and other aggrieved employees at the correct rate of pay for premiums because YSV 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, YSV failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Olmedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

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

During the relevant time period, YSV regularly failed to authorize and permit Mr. Olmedo 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, YSV's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Olmedo and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, YSV failed to schedule rest periods, which, coupled with YSV's failure to provide adequate rest period coverage, further led to Mr. Olmedo and other aggrieved employees not being authorized and permitted to take rest periods.

Moreover, YSV had a company-wide policy of requiring all employees to sign blanket rest period waivers (“Meal Waiver/ Wavier [sp] of On Duty Meal/Rest Period”). YSV took the position that non-exempt, hourly paid employees had waived their rights to rest periods for the entirety of their employment and, on that basis, did not provide them with all rest periods to which they were entitled. YSV’s presumption that rest periods would not be provided at all due to blanket rest period waivers signed at or near the time of hire, discouraged and impeded Mr. Olmedo and other aggrieved employees from taking all rest periods to which they were entitled.

Furthermore, YSV maintained a company-wide on-premises rest period policy, which effectively required that Mr. Olmedo and other aggrieved employees remain on YSV’s premises during their rest periods. Because Mr. Olmedo and other aggrieved employees were restricted from leaving YSV’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, YSV effectively maintained control over Mr. Olmedo and other aggrieved employees during rest periods.

As a result of YSV’s practices and policies, Mr. Olmedo 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 rest periods to which they were entitled. For example, throughout his employment, Mr. Olmedo had to forego his rest periods entirely during each shift because the restaurant was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods.

YSV have also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Olmedo and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that YSV did pay Mr. Olmedo and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, YSV did not pay Mr. Olmedo and other aggrieved employees at the correct rate of pay for premiums because YSV 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, YSV failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Olmedo and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. YSV has not provided Mr. Olmedo 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, YSV has knowingly and intentionally provided Mr. Olmedo and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, YSV

issued uniform wage statements to Mr. Olmedo and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, YSV violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because YSV did not record the time Mr. Olmedo and other aggrieved employees spent working off-the-clock, YSV did not list the correct amount of gross wages and net wages earned by Mr. Olmedo and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, YSV failed to accurately list the total number of hours worked by Mr. Olmedo and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), YSV willfully failed to maintain accurate payroll records for Mr. Olmedo 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, YSV 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. Olmedo and other aggrieved employees, in violation of section 1198. Furthermore, in light of YSV's failure to

provide Mr. Olmedo and other aggrieved employees with second 30-minute meal periods to which they were entitled, YSV kept no records of meal start and end times for second meal periods.

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

Mr. Olmedo 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.

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

Mr. Olmedo and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40

hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

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

Violation of California Labor Code § 450 – Compelling Patronization

Labor Code section 450 provides that an employer may not "compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value." An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

During the relevant time period, YSV had a company-wide policy of failing to provide a sufficient number of uniform items to other aggrieved employees in relation to the shifts they were scheduled to work.

During their employment, other aggrieved employees were scheduled to work four (4) or more days per week, but YSV provided them with only three (3) uniform shirts, forcing them to purchase additional shirts from YSV in order to comply with its uniform policy. Other aggrieved employees spent approximately \$10 on each additional uniform shirt. Thus, YSV provided an insufficient quantity of uniform shirts to employees for the shifts they were required to work, forcing employees to purchase additional uniform items directly from YSV.

YSV's conduct of compelling and/or coercing other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. 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 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.”

YSV’s California restaurants 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. YSV could have provided Mr. Olmedo and other aggrieved employees with a resting facility within its restaurants, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Mr. Olmedo and other aggrieved employees were forced to adjust to areas not conducive to resting, such as a sectioned-off portion of the dining area or searching for an area outside of the restaurant which are not designated or reserved for their rest, such as their personal vehicles.

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

As a result of YSV’s company-wide policy and/or practice of denying employees any area to rest within their restaurants and company-wide failure to provide resting facilities in its restaurants, Mr. Olmedo 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. YSV’s failure to provide suitable resting facilities to Mr. Olmedo and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 13(B).

Mr. Olmedo and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring YSV 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.*

YSV’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 by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. YSV 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, YSV 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.

YSV 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 their work would reasonably permit the use of seats, nor were they provided with suitable seats. YSV’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 YSV’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. YSV’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 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 YSV 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 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)(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.*

YSV’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near other aggrieved employees’ 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. YSV could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

YSV did not provide other 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, YSV denied them the use of seats nearby during lulls in their work duties. Moreover, YSV did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of YSV’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. YSV’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 YSV 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, YSV, on a company-wide basis, required that Mr. Olmedo and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Olmedo and other aggrieved employees used their personal mobile devices to make and receive work-related phone calls pertaining to shift coverage and any issues at the restaurant. Further, Mr. Olmedo used his personal mobile phone to place orders for

the bar and the kitchen and to communicate with YSV's management via email. Additionally, Mr. Olmedo and other aggrieved employees used their personal mobile phones to download and access the CrewApp mobile application to access their schedules. Although YSV required Mr. Olmedo and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, YSV failed to reimburse them for these costs.

Second, during the relevant time period, YSV, on a company-wide basis, required that Mr. Olmedo and other aggrieved employees use their own personal vehicles to run company errands. For example, about once a week, Mr. Olmedo was required to use his personal vehicle and drive to a store to pick up necessary supplies for the restaurant. Additionally, every two months, Mr. Olmedo was required to use his personal vehicle to drive to another one of YSV's locations to attend mandatory meetings. Although YSV required Mr. Olmedo and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, YSV failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, YSV, on a company-wide basis, required Mr. Olmedo and other aggrieved employees to obtain and pay for certain certifications, such as a ServSafe certificate, which were required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Olmedo complied with this requirement and spent approximately \$20 to obtain a ServSafe certificate, but YSV did not reimburse him for the costs of obtaining the certification. Thus, YSV failed to reimburse Mr. Olmedo and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

Fourth, during the relevant time period, YSV, on a company-wide basis, expected employees to report to work in clean and presentable uniforms bearing the company logo, including a shirt. However, YSV did not provide its employees with a sufficient number of uniforms to wear for their shifts throughout the week. YSV only provided other aggrieved employees with three (3) shirts at the time of hire. Because YSV failed to provide its employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, other aggrieved employees were forced to pay out-of-pocket for some of their uniform items. For example, other aggrieved employees spent approximately \$10 out-of-pocket to purchase each additional uniform shirt from YSV. Since YSV did not provide an adequate number of uniform components to all employees, other aggrieved employees were required to purchase additional uniform items, such as shirts, directly from YSV, and were not reimbursed for these costs.

YSV could have provided Mr. Olmedo and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles, as well as an adequate number of uniform items; or YSV could have reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, certifications, and additional uniforms. Instead, YSV passed these operating costs off onto Mr. Olmedo and other aggrieved employees. At all relevant times, Mr. Olmedo did not earn at least two (2) times the minimum wage.

Thus, YSV 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. Olmedo 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, YSV failed to provide other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). YSV's failure to provide other aggrieved employees with written notice of basic information regarding their employment with YSV is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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." YSV, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Olmedo's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Olmedo 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. Olmedo, 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 YSV for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

Ninel Kocharyan
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 "Ninel", is shown on a light gray rectangular background.

Ninel Kocharyan

Copy: YOLANDA'S OF SIMI VALLEY, INC. (via U.S. Certified Mail); YOLANDA'S INC. (via U.S. Certified Mail); YOLANDA'S OF CAMARILLO, INC. (via U.S. Certified Mail); YOLANDA'S OF VENTURA, INC. (via U.S. Certified Mail)

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YOLANDA'S OF SIMI
VALLEY, INC.
590 E. LOS ANGELES AVE
SIMI VALLEY, CA 93065

7022 2410 0000 2406 0453

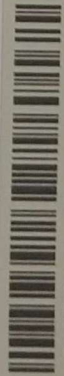
USE REVERSE FOR INSTRUCTIONS

YOLANDA'S OF SIMI
VALLEY, INC.
590 E. LOS ANGELES AVE
SIMI VALLEY, CA 93065

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF SIMI
VALLEY, INC.
590 E. LOS ANGELES AVE
SIMI VALLEY, CA 93065



9590 9402 7690 2122 7188 43

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0453

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

Agent

☐ Addressee

C. Date of Delivery

Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2406 0460

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 (check box, add fee as appropriate)

Return Receipt (hardcopy) \$

Return Receipt (electronic) \$

Postmark

YOLANDA'S OF SIMI
VALLEY, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

PS Form 3800, April 2015 PSN 7530-02-000-9003

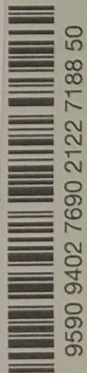
See Reverse for Instructions

YOLANDA'S OF SIMI
VALLEY, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF SIMI
VALLEY, INC.
1363 DONLON ST. #20
VENTURA, CA 93003



9590 9402 7690 2122 7188 50

2 7022 2410 0000 2406 0460

(over \$500)

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

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ 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

Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Delivery Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

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



7022 2410 0000 2406 0477

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy)
☐ Return Receipt (electronic)

OLMEDOV,
YOLANDA'S

Postmark

YOLANDA'S, INC.
1363 DONLON ST. #20
VENTURA, CA93003

PS Form 3800, April 2015 PSN 7530-02-000-9053

YOLANDA'S, INC.
1363 DONLON ST. #20
VENTURA, CA93003

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.

YOLANDA'S, INC.
1363 DONLON ST. #20
VENTURA, CA93003



9590 9402 7690 2122 7188 67

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0477

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
B. Received by (Printed Name) ☐ Addressee
C. Date of Delivery

D. 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[®]
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Priority Mail Express[®]
☐ Registered MailTM
☐ Registered Mail Restricted Delivery
☐ Signature ConfirmationTM
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2406 0484

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 (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

Postmark

Label

YOLANDA'S OF
CAMARILLO, INC.
86 DAILY DR
CAMARILLO, CA 93010

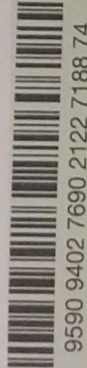
PS Form 3811, April 2010 PSN 7530-02-000-9053

YOLANDA'S OF
CAMARILLO, INC.
86 DAILY DR
CAMARILLO, CA 93010

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.

YOLANDA'S OF
CAMARILLO, INC.
86 DAILY DR
CAMARILLO, CA 93010



9590 9402 7690 2122 7188 74

2. Article Number (transfer from service label)

7022 2410 0000 2406 0484

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ 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

Domestic Return Receipt

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



7022 2410 0000 2406 0491

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 (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail[®] \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

☐ Registered Mail \$

☐ Priority Mail Express \$

☐ Adult Signature \$

☐ Adult Signature Restricted Delivery \$

☐ Certified Mail \$

☐ Certified Mail Restricted Delivery \$

☐ Collect on Delivery \$

☐ Collect on Delivery Restricted Delivery \$

☐ Insured Mail \$

☐ Signature Confirmation \$

YOLANDA'S OF
CAMARILLO, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

YOLANDA'S OF
CAMARILLO, INC.
1363 DONLON ST. #20
VENTURA, CA 93003

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.

YOLANDA'S OF
CAMARILLO, INC.
1363 DONLON ST. #20
VENTURA, CA 93003



9590 9402 7690 2122 7188 81

2. A

(Transmit from service label)

7022 2410 0000 2406 0491

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ 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

☐ Insured Mail

☐ Signature Confirmation

☐ Registered Mail

☐ Priority Mail Express[®]

☐ Priority Mail Express[®]

☐ Registered Mail[™]

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation[™]

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2406 0507

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 (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$

Postmark

YOLANDA'S OF
VENTURA, INC.
2753 E. MAIN ST.
VENTURA, CA 93003

PS Form 3800, April 2015 PSN 7530-02-000-9053

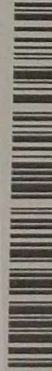
See Reverse for Instructions

YOLANDA'S OF
VENTURA, INC.
2753 E. MAIN ST.
VENTURA, CA 93003

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF
VENTURA, INC.
2753 E. MAIN ST.
VENTURA, CA 93003



9590 9402 7690 2122 7188 98

2. PSN Number (Transfer from certified label)

7022 2410 0000 2406 0507

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ 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
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Priority Mail Express®

Domestic Return Receipt

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



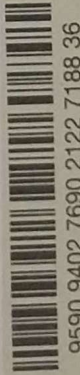
7022 2410 0000 2406 0514

YOLANDA'S OF
VENTURA, INC.
1363 DONLON STREET, STE. 20
VENTURA, CA 93003

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF
VENTURA, INC.
1363 DONLON STREET, STE. 20
VENTURA, CA 93003



9590 9402 7690 2122 7188 36

2. Article Number (Transfer from reverse) 7022 2410 0000 2406 0514

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
- B. Received by (Printed Name) ☐ Addressee
- C. Date of Delivery

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

- Service Type ☐ Priority Mail Express®
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation 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 (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$

06MEOU

YOLANDA'S

Postmark

YOLANDA'S OF
VENTURA, INC.
1363 DONLON STREET, STE. 20
VENTURA, CA 93003

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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.

YOLANDA'S, INC.
1363 DONLON ST. #20
VENTURA, CA 93003



9590 9402 7690 2122 7188 67

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0477

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)

Laura Plasmey

C. Date of Delivery

2/26/27

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

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.

YOLANDA'S OF
VENTURA, INC.
1363 DONLON STREET, STE. 20
VENTURA, CA 93003



9590 9402 7690 2122 7188 36

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0514

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)

Laura Plasmey

C. Date of Delivery

2/26/27

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

Restricted Delivery (over \$500)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF
CAMARILLO, INC.
1363 DONLON ST. #20
VENTURA, CA 93003



9590 9402 7690 2122 7188 81

2. A Article Number (Transfer from service label)

7022 2410 0000 2406 0491

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)

Laura Ramsey

C. Date of Delivery

2/6/24

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
- ☐ Insured Mail

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

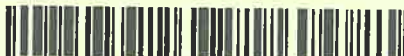
Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF
VENTURA, INC.
2753 E. MAIN ST.
VENTURA, CA 93003



9590 9402 7690 2122 7188 98

2. A Article Number (Transfer from service label)

7022 2410 0000 2406 0507

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

FEB 26 2024

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

SENDER: COMPLETE THIS SECTION

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

1.

**YOLANDA'S OF SIMI
VALLEY, INC.
1363 DONLON ST. #20
VENTURA, CA 93003**



9590 9402 7690 2122 7188 50

2

7022 2410 0000 2406 0460

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature] ☐ Agent ☒ Addressee

Received by (Printed Name)

Laura Masmyer

C. Date of Delivery

2/26/24

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

Service Type

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

(over \$500) Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

YOLANDA'S OF SIMI
VALLEY, INC.
590 E. LOS ANGELES AVE
SIMI VALLEY, CA 93065



9590 9402 7690 2122 7188 43

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0453

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

Received by (Printed Name)

C. Date of Delivery

8-3-22

- 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

(over 3500)

Domestic Return Receipt

PROOF OF SERVICE

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

On **April 30, 2024**, I served the document described as: **[PROPOSED] AMENDED JUDGMENT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Laura Plasmyer
1363 Donlon Street, Suite 20
Ventura, CA 93003

Registered Agent for Defendant:
YOLANDA'S OF SIMI VALLEY, INC.
YOLANDA'S OF CAMARILLO, INC.

Rod Gietzen
1363 Donlon Street, Suite 20
Ventura, CA 93003

Registered Agent for Defendant:
YOLANDA'S, INC.
YOLANDA'S OF VENTURA, INC.

☒ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

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

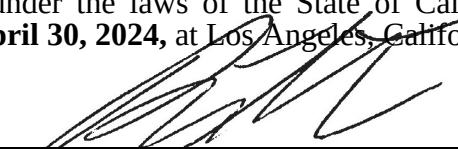
☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **April 30, 2024**, at Los Angeles, California.

Riley McIntire

Type/Print Name



Signature