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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Sophia Felix,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiff,

vs.

KIRSCHCOHN, INC., a California corporation; COHN RESTAURANT GROUP, INC., a California corporation; DMD3 LA MESA, INC., a California corporation; HARD WORK, INC. a California corporation; HARD WORK TOO, INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2024-00006252-CU-OE-CTL

FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION

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

Jury Trial Demanded

Plaintiff Cristian Torres, as an aggrieved employee and the State of California and all other non-party Aggrieved Employees, individually and on behalf of all other members of the public similarly situated, alleges as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA") to recover civil penalties and any other available relief on behalf of Plaintiff, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce Development Agency ("LWDA") in this case on February 20, 2024, until judgment ("non-party Aggrieved Employees"). Plaintiff's share of civil penalties sought in this action does not exceed $75,000.

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

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

suffered are less than $75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in San Diego, County of San Diego, in accordance with California Corporations Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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

THE PARTIES

6. Plaintiff Cristian Torres is a resident of San Diego, California. Defendants employed Plaintiff as an hourly paid, non-exempt Prep Cook from approximately March 2021 to July 2023. Plaintiff worked for Defendants at their Coasterra Modern Mexican Restaurant in San Diego, California. During his employment, Plaintiff typically worked ten (10) or more hours per day and five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately $19.00 per hour. Plaintiff's primary job duties included, without limitation, preparing ingredients, cooking dishes, assisting with catering events, and cleaning.

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

8. COHN RESTAURANT GROUP, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

9. DMD3 LA MESA, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged

throughout this county and the State of California.

10. HARD WORK, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

11. HARD WORK TOO, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; HARD WORK TOO, INC.; and/or DOES 1 through 10 (collectively, "Defendants" or "CRG"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,

omissions, occurrences, and transactions alleged herein.

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

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

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

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

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

(d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who shared the power to set the wages of Plaintiff and other non-party Aggrieved

Employees and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

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

20. KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; HARD WORK TOO, INC.; and DOES 1 through 10 are therefore alter egos of each other.

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

22. Plaintiff further alleges, upon information and belief, that Defendants KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. are alter egos of each other for the following reasons:

(a) On the California Secretary of State's website (https://bizfileonline.sos.ca.gov/), KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. share the same principal address and/or mailing address of "2225 HANCOCK STREET, SAN DIEGO, CA 92110";

(b) On the California Secretary of State's website, KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; and HARD WORK TOO, INC. share the same agent for service of process, "David Cohn;"

(c) According to Statement of Information forms filed with the California

Secretary of State, KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. share the same officer and/or director, Chief Financial Officer, Michael Feinman;

(d) According to Statement of Information forms filed with the California Secretary of State, KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. share the same officer and/or director, Secretary Lesley Cohn;

(e) According to Statement of Information forms filed with the California Secretary of State, KIRSCHCOHN, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. share the same officers and/or directors, including:

(i) David Cohn, who serves as Chief Executive Officer;

(ii) Michael Feinman, who serves as Chief Financial Officer; and

(iii) Lesley Cohn, who serves as Secretary; and

(f) On information and belief, KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. utilize the same standardized employment forms, but not limited to employee scheduling forms, and issue the same employment policies.

PAGA REPRESENTATIVEALLEGATIONS

23. Defendants operate approximately 25 multi-concept dining restaurant locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in San Diego, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

24. In particular, Plaintiff and other non-party Aggrieved Employees, on information

and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees' assigned locations or positions.

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

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

27. 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.

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

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

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to be paid at a

regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all renumeration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms of remuneration in calculating the regular rate of pay for other non-party Aggrieved Employees.

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

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

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

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

should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

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

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

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

38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive full reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment and that they did not receive full reimbursement of applicable business-related expenses and costs incurred.

39. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants had the

financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

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

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

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

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

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

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

45. On February 22, 2024, Plaintiff provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged

violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars ($75). The LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-1012652-24. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated February 22, 2024, is attached hereto as "Exhibit 1."

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

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

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

49. Defendants, at all times relevant to this complaint, were employers or persons

acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth above.

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

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

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

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

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

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

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

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

(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 non-party Aggrieved Employees with meal periods, as set forth below;

(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 non-party Aggrieved Employees to take rest periods, as set forth below;

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

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

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

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

(j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. 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."

56. 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.

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

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

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

hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

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

61. First, during the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to perform tasks off-the-clock before and after their scheduled shifts. For example, prior to clocking in for the start of his shift, Defendants required Plaintiff to arrive early and spend up to 20 minutes preparing ingredients and cleaning the kitchen. Additionally, because Defendants implemented a timekeeping system that prevented employees from clocking in before their scheduled shifts, they were prohibited from recording time worked prior to the start of their scheduled shifts. As a result, when Plaintiff was required to report to work earlier than his usual shift start time, he was forced to wait off-the-clock for a manager to authorize him to clock in earlier, because the timekeeping system did not allow him to clock in prior to his scheduled shift start time. Thus, Plaintiff and other non-party Aggrieved Employees performed work prior to the start of their shifts, but were unable to record this time. As a further example, after clocking out, Defendants required Plaintiff to continue working for up to an hour, three (3) times per week, completing tasks such as conducting inventory and assisting with preparing food items for catering events.

62. Moreover, Defendants' managers contacted Plaintiff on his personal cellular phone about work-related matters when he was not scheduled to work, but did not compensate him for this time. For example, Defendants' managers communicated with Plaintiff off-the clock for up to an hour regarding work details such as menu replacements, ingredients, and assignment status. Thus, Defendants failed to track the time Plaintiff and other non-party

Aggrieved Employees spent working before and after their scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

63. Second, on information and belief, Defendants had, and continue to have, company-wide policies and/or practices of understaffing their restaurant locations while assigning heavy workloads, such as requiring employees to meet food preparation deadlines for scheduled catering events while also handling their usual duties for fulfilling restaurant orders. Because Defendants did not employ or staff a sufficient number of employees to meet guest demand while simultaneously fulfilling catering event orders, there was no one available to relieve employees needing meal period coverage, and Plaintiff and other non-party Aggrieved Employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods. For example, Plaintiff worked through his meal periods regularly to meet preparation deadlines for catering events. Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for the time they spent working off the clock during unpaid meal periods.

64. Further, because Defendants frowned upon employees accruing meal period penalties, Defendants' management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by Defendants. In addition, Defendants' company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted.

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

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

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

FAILURE TO PAY MINIMUM WAGES

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

68. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11050(2)(K) (defining “Hours Worked”).

69. First, during the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related tasks while off-the-clock, including preparing ingredients, cleaning the kitchen, conducting inventory, and assisting with preparing food items for catering events. Additionally, as stated, Defendants’ timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording time worked prior to the start of their scheduled shifts because employees could not clock in until the start-time of their scheduled shifts. Moreover, as stated, Defendants’ managers would contact Plaintiff on his personal cellular phone about work-related matters off-the-clock, but he was not compensated for this time worked. Thus, Defendants failed to track this time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

70. Second, as stated above, due to Defendants’ policies and/or practices of understaffing their restaurants while assigning heavy workloads and failing to schedule meal periods, Plaintiff and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, Defendants’ managers pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. In addition, as stated, Defendants’ company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from entering time worked during meal periods because the system locked out Plaintiff and other non-party Aggrieved Employees

for a full 30 minutes. Thus, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

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

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

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

75. At all relevant times herein set forth, 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.

76. First, during the relevant time period, as stated, on information and belief, Defendants had, and continue to have, company-wide polices and/or practices of understaffing their restaurant locations while assigning heavy workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage. Additionally, Defendants, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved Employees not to be relieved of their duties for compliant meal periods. For example, Plaintiff missed his meal periods and/or took his meal periods late, after the end of his fifth hour of work, in order to complete inventory and food preparation for catering events.

77. Second, as stated, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants' management pressured Plaintiff and other non-party Aggrieved Employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that Defendants would otherwise owe. For example, when the kitchen was overloaded with customer orders, Plaintiff was unable to take a compliant meal period, but would be pressured by his manager to falsify his meal period clock-out and clock-in times to make them appear compliant.

78. Third, as stated, Defendants' company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Plaintiff and other non-party Aggrieved Employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Plaintiff was unable to record when his meal periods were interrupted or cut short by management asking him questions regarding food preparation for events.

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

hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

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

83. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received all premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants did pay other non-party Aggrieved Employees premium pay for missed, late, and interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees at the correct rate of pay for premiums because Defendants 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. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums due.

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

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

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

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

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

88. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices and/or policies of understaffing and assigning of heavy workloads resulted in a lack of rest period coverage and prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

89. Furthermore, upon information and belief, during the relevant time period, Defendants maintained a company-wide on-premises rest period policy, which effectively

required that Plaintiff and/or other non-party Aggrieved Employees remain on the work premises during their rest periods. Because Plaintiff and/or other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff and/or other non-party Aggrieved Employees during rest periods.

90. As a result of Defendants' practices and policies, Plaintiff and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Plaintiff had to forego his rest periods entirely because there was a lack of coverage, or would have them interrupted when Defendants' management asked him questions about the menu or ingredient preparation for events.

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

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

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS

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

93. At all relevant times herein set forth, California Labor Code section 226(a)

provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

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

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

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

overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

97. 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.

98. California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

99. 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. During the relevant time period, Defendants 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 Plaintiff and other non-party

Aggrieved Employees, in violation of section 1198. Also, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES UPON TERMINATION

VIOLATION OF LABOR CODE SECTIONS 201 AND 202

101. 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.

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

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

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FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

104. 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.

105. 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.

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

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

108. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees all wages due violates Labor Code section 204. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTION 2802

109. 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."

110. During the relevant time period, Defendants, on a company-wide basis, required Plaintiff and other non-party Aggrieved Employees to use their 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 and/or mobile data expenses. For example, Plaintiff was required to use his personal cellular phone to respond to calls from Defendants to discuss work-related matters such as menu replacements, ingredients, and assignments to complete. Although Defendants required Plaintiff and other non-party Aggrieved Employees to use their personal mobile devices and/or mobile data to carry out their work-related duties, Defendants failed to reimburse them for their costs incurred.

111. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with the actual equipment for use on the job, such as company mobile devices, or Defendants could have reimbursed employees for the costs of their mobile device usage. Instead, Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

112. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other non-party Aggrieved

Employees for necessary business-related expenses and costs.

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

As to the First Cause of Action

2. That the Court declare, adjudge, and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 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); and 2802 (by failing to reimburse business expenses);

3. 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, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and for 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, 510, 512(a), 516, 1174(d), 1182.12, 1194,

1197, 1198, and 2802;

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

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

Dated: April 29, 2024

Respectfully submitted,

Capstone Law APC

By: ______________________

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EXHIBIT “1”

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February 22, 2024

VIA ONLINE SUBMISSION

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

Subject: *Cristian Torres v. Kirschcohn, Inc., et al.*

Dear PAGA Administrator:

This office represents Cristian Torres in connection with his claims under the California Labor Code. Mr. Torres was an employee of KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC. and/or HARD WORK TOO, INC. For the purpose of this letter, Mr. Torres collectively refers to these entities as "CRG."

The employers may be contacted directly at the addresses below:

KIRSCHCOHN, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

COHN RESTAURANT GROUP, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

DMD3 LA MESA, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

HARD WORK, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

HARD WORK TOO, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

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

CRG employed Mr. Torres as an hourly paid, non-exempt Prep Cook from approximately March 2021 through July 2023 at its Coasterra Modern Mexican Restaurant in San Diego, California. Mr. Torres typically worked shifts of ten (10) or more hours per day and five (5) days per week. His job duties included, without limitation, preparing ingredients, cooking dishes, assisting with catering events, and cleaning.

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

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

KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC.; and HARD WORK TOO, INC. are California corporations. Together, they operate approximately 25 multi-concept dining restaurant locations in California. Upon information and belief, CRG maintains a single, centralized Human Resources (HR) department at its corporate headquarters in San Diego, California, for all non-exempt, hourly paid employees working for CRG in California, including Mr. Torres and other aggrieved employees. At all relevant times, CRG issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Torres and other aggrieved employees, regardless of their location or position.

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

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[1] These facts, theories, and claims are based on Mr. Torres's experience and counsel's review of those records currently available relating to Mr. Torres'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. Torres 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.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

CRG willfully failed to pay all overtime wages owed to Mr. Torres and other aggrieved employees. During the relevant time period, Mr. Torres 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, CRG had, and continues to have, a company-wide policy and/or practice of requiring Mr. Torres and other aggrieved employees to perform tasks off-the-clock before and after their scheduled shifts. For example, prior to clocking in for the start of his shift, CRG required Mr. Torres to arrive early and spend up to 20 minutes preparing ingredients and cleaning the kitchen. Additionally, because CRG implemented a timekeeping system that prevented employees from clocking in before their scheduled shifts, they were prohibited from recording time worked prior to the start of their scheduled shifts. As a result, when Mr. Torres was required to report to work earlier than his usual shift start time, he was forced to wait off-the-clock for a manager to authorize him to clock in earlier, because the timekeeping system did not allow him to clock in prior to his scheduled shift start time. Thus, Mr. Torres and other aggrieved employees performed work prior to the start of their shifts, but were unable to record this time. As a further example, after clocking out, CRG required Mr. Torres to continue working for up to an hour, three (3) times per week, completing tasks such as conducting inventory and assisting with preparing food items for catering events.

Moreover, CRG's managers contacted Mr. Torres on his personal cellular phone about work-related matters when he was not scheduled to work, but did not compensate him for this time. For example, CRG's managers communicated with Mr. Torres off-the clock for up to an hour regarding work details such as menu replacements, ingredients, and assignment status. Thus, CRG failed to track the time Mr. Torres and other aggrieved employees spent working before and after their scheduled shifts, and Mr. Torres and other aggrieved employees received no compensation for this time.

Second, on information and belief, CRG had, and continues to have, company-wide policies and/or practices of understaffing its restaurant locations while assigning heavy workloads, such as requiring employees to meet food preparation deadlines for scheduled catering events while also handling their usual duties for fulfilling restaurant orders. Because CRG did not employ or staff a sufficient number of employees to meet guest demand while simultaneously fulfilling catering event orders, there was no one available to relieve employees needing meal period coverage, and Mr. Torres and other aggrieved employees were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. CRG also had a practice of failing to schedule meal periods, which further caused Mr. Torres and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Torres worked through his meal periods regularly to meet preparation deadlines for catering events. CRG did not compensate Mr. Torres and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Further, because CRG frowned upon employees accruing meal period penalties, CRG's management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by CRG. In addition, CRG's company-wide timekeeping system prevented Mr. Torres and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Torres and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, CRG's timekeeping system further prevented Mr. Torres and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

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

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

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

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

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

First, during the relevant time period, CRG had, and continues to have, a company-wide policy and/or practice of requiring Mr. Torres and other aggrieved employees to perform various work-related tasks while off-the-clock, including preparing ingredients, cleaning the kitchen, conducting inventory, and assisting with preparing food items for catering events. Additionally, as stated, CRG's timekeeping system prevented Mr. Torres and other aggrieved employees from recording time worked prior to the start of their scheduled shifts because employees could not clock in until the start-time of their scheduled shifts. Moreover, as stated, CRG's managers would contact Mr. Torres on his personal cellular phone about work-related matters off-the-clock, but he was not compensated for this time worked. Thus, CRG failed to track this time Mr. Torres and other aggrieved employees spent working off-the-clock, and Mr. Torres and other aggrieved employees received no compensation for this time.

Second, as stated above, due to CRG's policies and/or practices of understaffing its restaurants while assigning heavy workloads and failing to schedule meal periods, Mr. Torres and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CRG's managers pressured Mr. Torres and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. In addition, as stated, CRG's company-wide timekeeping system prevented Mr. Torres and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Torres and other aggrieved employees for a full 30 minutes. Thus, CRG failed to pay Mr. Torres and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CRG did not pay at least minimum wages for all hours worked by Mr. Torres and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CRG did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, CRG regularly failed to pay at least minimum wages to Mr. Torres 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. Torres 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.

First, during the relevant time period, as stated, on information and belief, CRG had, and continues to have, company-wide polices and/or practices of understaffing its restaurant locations while assigning heavy workloads, resulting in a failure to provide Mr. Torres and other aggrieved employees with adequate meal period coverage. Additionally, CRG, on a company-wide basis, had a practice of failing to schedule meal periods, which further caused Mr. Torres and other aggrieved employees not to be relieved of their duties for compliant meal periods. For example, Mr. Torres missed his meal periods and/or took his meal periods late, after the end of his fifth hour of work, in order to complete inventory and food preparation for catering events.

Second, as stated, on information and belief, because CRG frowned upon employees accruing meal period penalties, CRG's management pressured Mr. Torres and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that CRG would otherwise owe. For example, when the kitchen was overloaded with customer orders, Mr. Torres was unable to take a compliant meal period, but would be pressured by his manager to falsify his meal period clock-out and clock-in times to make them appear compliant.

Third, as stated, CRG's company-wide timekeeping system prevented Mr. Torres and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Torres and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Torres was unable to record when his meal periods were interrupted or cut short by management asking him questions regarding food preparation for events.

Fourth, CRG did not provide Mr. Torres and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Torres worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Torres and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

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

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

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

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

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

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

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

As a result of CRG's practices and policies, Mr. Torres and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Torres had to regularly forego his rest periods entirely because there was a lack of coverage, or would have them interrupted when CRG's management asked him questions about the menu or ingredient preparation for catering events.

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

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

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

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

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

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

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), CRG willfully failed to maintain accurate payroll records for Mr. Torres 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, CRG 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. Torres and other aggrieved employees in violation of section 1198. Furthermore, in light of CRG's failure to provide Mr. Torres and other aggrieved employees with second 30-minute meal periods to which they were entitled, CRG kept no records of meal start and end times for second meal periods.

Because CRG failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Torres and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Torres and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Torres 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).

<u>Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment</u>

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, CRG failed to pay Mr. Torres and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Torres 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.

CRG willfully failed to pay Mr. Torres and other aggrieved employees who are no longer employed by CRG all their earned wages, 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 CRG's employ.

Mr. Torres 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 § 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."

During the relevant time period, CRG, on a company-wide basis, required Mr. Torres and other aggrieved employees to use their 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 and/or mobile data expenses. For example, Mr. Torres was required to use his personal cellular phone to respond to calls from CRG to discuss work-related matters such as menu replacements, ingredients, and assignments to complete. Although CRG required Mr. Torres and other aggrieved employees to use their personal mobile devices and/or mobile data to carry out their work-related duties, CRG failed to reimburse them for their costs incurred.

CRG could have provided Mr. Torres and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices or, CRG could have reimbursed employees for the costs of their mobile device usage. Instead, CRG passed these operating costs off onto Mr. Torres and other aggrieved employees. At all relevant times, Mr. Torres did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CRG, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Torres's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Torres seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Torres, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CRG for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Torres 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:

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

Best Regards,

Jezzette Ron

Copy: KIRSCHCOHN, INC. (via U.S. Certified Mail); COHN RESTAURANT GROUP, INC. (via U.S. Certified Mail); DMD3 LA MESA, INC (via U.S. Certified Mail); HARD WORK, INC. (via U.S. Certified Mail); HARDWORK TOO, INC. (via U.S. Certified Mail)

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TORRES V.
KIRSCHCOHN

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2225 HANCOCK STREET
SAN DIEGO, CA 92110

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2225 HANCOCK STREET
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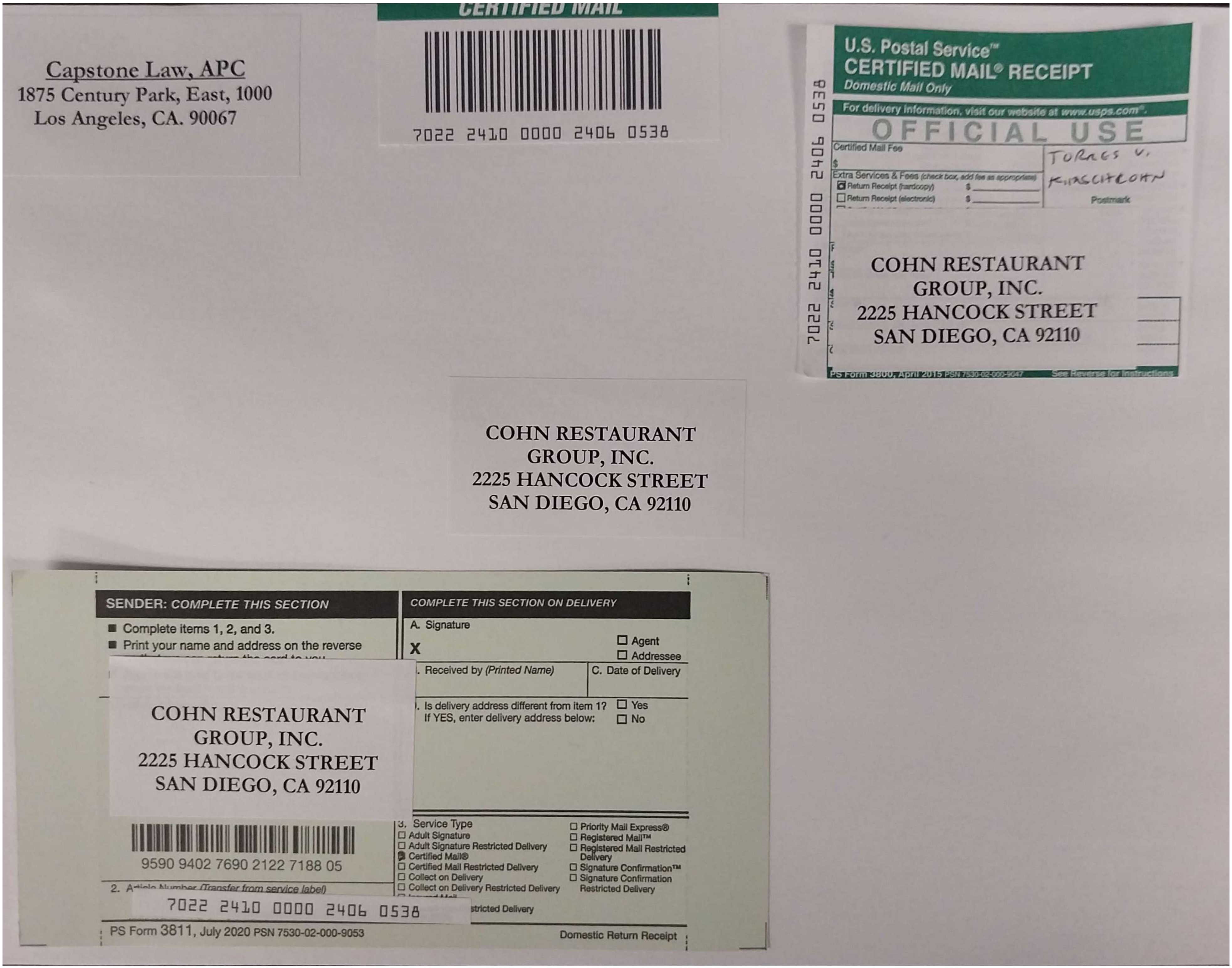

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Torres v. Kirschenbaum
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If YES, enter delivery address below: No
3. Service Type
Adult Signature
Adult Signature Restricted Delivery
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stricted Delivery
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TORRES v. KIRSCHCOHN

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2225 HANCOCK STREET
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2225 HANCOCK STREET
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D. Is delivery address different from item 1? ☐ Yes
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3. Service Type
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☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
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TORRES v. KIRSCHCOHN

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2225 HANCOCK STREET
SAN DIEGO, CA 92110

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HARD WORK, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

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HARD WORK, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

9590 9402 7690 2122 7188 29

2. Article Number (Transfer from service label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature
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☐ 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
Restricted Delivery
☐ Priority Mail Express®
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Torres v. Kirsch Cohen

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HARD WORK TOO, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

See Reverse for Instructions

HARD WORK TOO, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse	A. Signature X ☐ Agent ☐ Addressee Received by (Printed Name) C. Date of Delivery
1. HARD WORK TOO, INC. 2225 HANCOCK STREET SAN DIEGO, CA 92110	Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
9590 9402 7690 2122 7187 82	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
2. 7022 2410 0000 2406 0521	Restricted Delivery

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HARD WORK, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

9590 9402 7690 2122 7188 29

2. Article Number *(Transfer from service label)*

7022 2410 0000 2406 0569

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Ben H RT 1009 ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Emily C-19

C. Date of Delivery 2/24/24

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

Domestic Return Receipt

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DMD3 LA MESA, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

9590 9402 7690 2122 7188 12

2. Article Number *(Transfer from service label)*

7022 2410 0000 2406 0552

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Ben H RT 1009 ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Emily C-19

C. Date of Delivery 2/24/24

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

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COHN RESTAURANT
GROUP, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

9590 9402 7690 2122 7188 05

2. Article Number *(Transfer from service label)*

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A. Signature

X Ben H RT ...9 ☐ Agent ☐ Addressee

B. Received by *(Printed Na...* Emily M...

C. ...te of Delivery 2/24/24

D. Is delivery address differe... ☐ Yes
If YES, enter delivery add... ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Deliver...
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted De...
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- ...gistered Mail Restricted Delivery
- ...gnature Confirmation™
- ...gnature Confirmation Restricted Delivery

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1.

HARD WORK TOO, INC.
2225 HANCOCK STREET
SAN DIEGO, CA 92110

9590 9402 7690 2122 7187 82

2.

7022 2410 0000 2406 0521

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Bu H Ri ...

☐ Agent
☐ Addressee

B. Received by (*Printed Name*) Emily C-17

C. Date of Delivery 2/24/24

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

3. Service Type
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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 29, 2024**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** 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:

Matthew D. Pate mpate@raineslaw.com Beth A. Schroeder Bschroeder@raineslaw.com RAINES FELDMAN LITTRELL, LLP 100 Avenue of the Stars, 19th Floor Los Angeles, Ca 90067 Tel.: (310) 440-4100 Fax: (310) 691-1367	*Attorneys for Defendants* KIRSCHCOHN, INC.; COHN RESTAURANT GROUP, INC.; DMD3 LA MESA, INC.; HARD WORK, INC. and HARD WORK TOO, INC.

Dora Melendez
dmlendez@raineslaw.com

[ ] **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.

[**X**] **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).

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **April 29, 2024,** at Los Angeles, California.

Xochitl Tapia	[signature]
Type/Print Name	Signature