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Attorneys for Plaintiff Jose Manuel Garcia Reynoso

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

JOSE MANUEL GARCIA REYNOSO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

CASA GUADALAJARA, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 24CU000466C

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages During Employment
6. Wage Statement Violations
7. Failure to Maintain Accurate Records
8. Civil Penalties under the Private Attorneys General Act ("PAGA")

1 Plaintiff JOSE MANUEL GARCIA REYNOSO (“Reynoso” or “Plaintiff”) brings this class
2 and representative action as an individual and on behalf of all individuals currently or formerly
3 employed by Defendants CASA GUADALAJARA, INC.; and DOES 1 through 50 (collectively,
4 “Defendants”) in the State of California as hourly non-exempt employees at any time from four years
5 preceding the filing of this action through the time of trial (the “Class” or “Class Members” and the
6 “Class Period”), and on information and belief alleges as follows:

7 **INTRODUCTION**

8 1. This is a class action brought under California Code of Civil Procedure § 382 for
9 Defendants’ wage and hour violations of the California Labor Code and Industrial Welfare
10 Commission (“IWC”) Wage Orders.

11 2. Defendants operate a restaurant in San Diego County, and employ hourly, non-exempt
12 employees, who are entitled to wage and hour protections under the California Labor Code and IWC
13 Wage Orders. Plaintiff worked as an hourly, non-exempt employee as a cook and busser for
14 Defendants’ restaurant since February 2009.

15 3. During his employment, Defendants failed to pay Plaintiff and the Class Members for
16 time Defendants forced employees to work “off the clock.”

17 4. Defendants also required Plaintiff and the Class to work through their meal and rest
18 breaks as a matter of policy, and they failed to pay Plaintiff and the Class for such time or premiums.
19 This resulted in an underpayment of regular and overtime hours worked each pay period for Plaintiff
20 and the Class. Defendants thus failed to provide compliant meal and rest periods (or premiums in lieu
21 thereof).

22 5. As a result of these violations, Defendants failed to timely pay Plaintiff and the Class
23 each pay period on paydays and upon separation of employment, and thus are liable for waiting time
24 and other statutory penalties.

1 exercises control over the wages, hours, and working conditions of Plaintiff and other employees,
2 suffers and permits them to work, and engages the workforce creating a common law employment
3 relationship. Additionally, all Defendants have common ownership, common management,
4 interrelationship of operations, and centralized control over labor relations and are therefore part of an
5 integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged
6 herein.

7 15. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
8 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
9 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-Defendants,
10 such that the acts and omissions of each Defendant are legally attributable to all others.

11 16. Plaintiff is informed, believes, and alleges that the above-mentioned Defendants
12 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
13 minimum wages and days of work and other provisions of the Labor Code with respect to the Class
14 of aggrieved employees. As a result, they may be held personally liable under Labor Code sections
15 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

16 **CLASS ALLEGATIONS**

17 17. Plaintiff brings this action as an individual and on behalf of the following class under
18 Code of Civil Procedure § 382: All individuals currently or formerly employed by Defendants in the
19 State of California as hourly non-exempt employees at any time from four years preceding the filing
20 of this action through the time of trial (the “Class” or “Class Members” and the “Class Period”).

21 18. Further, Plaintiff proposes the following subclasses:

- 22 a. Unpaid Minimum or Regular Wage Subclass: All Class Members who were not
23 paid all regular or minimum wages for all hours worked each pay period
24 (including for off-the-clock work).
- 25 b. Unpaid Overtime Subclass: All Class Members who were not paid for all
26 overtime hours worked each pay period.

- c. Meal Period Subclass: All Class Members who [1] worked shifts of five hours or more without a duty-free meal period of at least 30 minutes or worked shifts of 10 hours or more without a second duty-free meal period of at least 30 minutes; and [2] who were not paid one hour of pay at the regular rate of compensation for each of those days.
- d. Rest Period Subclass: All Class Members who [1] were not authorized and permitted to take a 10-minute rest period for every four hours or major fraction thereof; and [2] who were not paid one hour at the regular rate of compensation for each of those days.
- e. Untimely Payment of Wages Subclass: All individuals who are members of the following classes: (i) Unpaid Minimum or Regular Wage Subclass; (ii) Unpaid Overtime Subclass; (iii) Meal Period Subclass; and (iv) Rest Period Subclass.
- f. Wage Statement Subclass: All individuals who are members of the following classes who received a wage statement from Defendants at any time during the one-year period preceding the filing of this action through the present: (i) Unpaid Minimum or Regular Wage Subclass; (ii) Unpaid Overtime Subclass; (iii) Meal Period Subclass; and (iv) Rest Period Subclass.
- g. Waiting Time Penalty Subclass: All individuals who are members of the following classes at any time during the three-year period preceding the filing of this action through the present, excluding current employees who have never previously separated from employment with Defendants: (i) Unpaid Minimum or Regular Wage Subclass; (ii) Unpaid Overtime Subclass; (iii) Meal Period Subclass; and (iv) Rest Period Subclass.
- h. Accurate Records Subclass: All individuals who are members of the following classes: (i) Unpaid Minimum or Regular Wage Subclass; (ii) Unpaid Overtime Subclass; (iii) Meal Period Subclass; and (iv) Rest Period Subclass.

19. **Numerosity.** The members of the Class are so numerous that joinder of all individuals would be impracticable. The identity of the Class Members is readily ascertainable by inspection of employment and payroll records Defendants maintain and are required to maintain by under the California Labor Code, IWC Wage Orders, and federal law. Plaintiff are informed, believe, and allege there are more than 130 Class Members.

20. ***Adequacy of Representation.*** Plaintiff is an adequate class representative. Plaintiff will take all necessary steps to adequately and fairly represent and protect the interest of the Class. Plaintiff is represented by attorneys who have substantial experience prosecuting, defending, resolving and litigating wage and hour class actions in California state and federal courts.

21. ***Superiority.*** A class action is superior to other means for adjudication of the claims of the Class and is beneficial and efficient for the parties and the Court. Class treatment will allow for the common issues to be resolved in a single forum, simultaneously and without duplication of effort and expense.

22. **Commonality.** Common questions of law and fact and a community of interest exist amongst Plaintiff and the Class. These common issues arise from the employment relationship with Defendants and predominate over any individual issues.

23. **Typicality.** Plaintiff' claims are typical of the claims of the other Class Members. Plaintiff and Class Members were subject to the same policies and practices of Defendants, which resulted in losses to Plaintiff and Class Members. Proof of common unlawful business practices, which Plaintiff experienced and are representative of, will establish the right of the Class to recover on the causes of action alleged herein.

PAGA ALLEGATIONS

24. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on behalf of the State of California and all current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of the PAGA

1 Notice through the current date and the date of final judgment in any pending action (the “aggrieved
2 employees” and the “PAGA Period”).

3 25. The State of California, via the Labor and Workforce Development Agency
4 (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins*
5 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
6 files suit is always the real party in interest.”])

7 26. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
8 and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly
9 suited to act on behalf of the State of California and collect civil penalties for all violations committed
10 against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas*
11 *Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved
12 employee”—a person affected by one Labor Code violation committed by an employer—to pursue
13 penalties for all the Labor Code violations committed by that employer.”])

14 27. “Notwithstanding any other provision of law, any provision of this code that provides
15 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
16 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this
17 code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
18 behalf of himself or herself and other current or former employees pursuant to the procedures specified
19 in Section 2699.3.” (Labor Code § 2699(a)).

20 28. Now that at least 65 days have passed from Plaintiff first notifying Defendants and the
21 LWDA on **March 29, 2024**, of the specific provisions of the Labor Code alleged to have been violated
22 (including the supporting facts and theories) without LWDA intervention—and without Defendants
23 giving written notice by certified mail to Plaintiff providing a description of any actions taken to cure
24 the alleged violations within 33 days—Plaintiff exhausted all prerequisites and commences this civil
25 action under Labor Code § 2699 with respect to the PAGA notice and any amendments or supplements
26

thereto. A true and correct copy of the PAGA Notice, incorporated by reference as though fully set forth herein, is attached hereto as **Exhibit A**.

29. All allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”)

GENERAL ALLEGATIONS

30. Defendants operate a restaurant in California. Defendants employ hourly, non-exempt employees in the State of California, including in San Diego, who are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

31. Throughout their employment, Plaintiff and other employees were required to perform “off the clock” work. Plaintiff often worked overtime over forty hours per week and/or eight hours per day during their employment. Defendants were aware of the time Plaintiff and the Class worked off the clock because Defendants directed them to do so and observed them working during hours for which they were not paid.

32. Additionally, Defendants usually required Plaintiff and the Class to work through their meal and rest breaks, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. Plaintiff and the Class usually do not receive their 30-minute meal breaks at all, and if they do receive them, the breaks are usually interrupted or late. Plaintiff and the Class are often forced to clock out prior to the end of the sixth hour of work while continuing their work duties and forced to waive their meal breaks. If they do work over six hours without taking a break, they are often scolded for not clocking out before the end of the sixth hour.

33. Plaintiff and the Class were not directed to take breaks, or often even allowed to take breaks. They were not scolded for not taking a break, but they were only scolded for staying clocked in longer than six hours. Their supervisors know that they often perform work after clocking out because they observe them and direct them to do so. Plaintiff believes the company requires

1 employees to do this to make it appear as if employees can waive their breaks. Defendants thereby
2 force employees to involuntarily waive their breaks and make them work off-the-clock.

3 34. Plaintiff and other employees never voluntarily waived their right to meal breaks.
4 Plaintiff and other employees have sometimes been paid meal period penalties, but not when clocked
5 in for six hours or fewer. Plaintiff and the Class are not paid for interrupted, short, late, and most late
6 meal periods.

7 35. When Defendants did not provide fully compliant meal periods, Defendants failed to
8 pay Plaintiff and other aggrieved employees and Class Members a meal period premium at the regular
9 rate of compensation in violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel,*
10 LLC (2021) 11 Cal. 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of
11 compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses
12 all nondiscretionary payments, not just hourly wages”).

13 36. Furthermore, due to the heavy workload and pressures from Defendants, Defendants
14 failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction
15 thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage
16 Order. Defendants also had a policy and practice of not paying rest period premiums to Plaintiff and
17 other aggrieved employees and Class Members who were unable to take rest periods.

18 37. Defendants were aware that Plaintiff and other aggrieved employees and Class
19 Members worked through meal and rest periods because Defendants set the policies and schedules
20 that prevented employees from taking lawful breaks. Defendants encouraged Plaintiff and other
21 aggrieved employees and Class Members to work through meal periods and rest periods and assigned
22 them tasks that prevented them from taking any meal or rest breaks.

23 38. With respect to the unpaid regular wages, overtime wages, and meal and rest period
24 premiums owed to Plaintiff and other employees, Defendants failed to pay those wages on time each
25 pay period or upon separation of employment. (*See Naranjo v. Spectrum Security Services, Inc.* (2022)
26 13 Cal. 5th 93.)

39. Because Defendants did not pay Plaintiff and other employees for all wages/premiums owed each pay period of their employment, Defendants failed to timely pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays).

40. Defendants further failed in their affirmative obligation to provide accurate itemized wage statements each pay period to Plaintiff and other employees. Defendants issued wage statements to Plaintiff and, on information and belief, other employees, which contain multiple violations. First, on each wage statement furnished, Defendants failed to accurately state the “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5). The wage statements also failed to specify the “total hours worked” under subsection (2). Plaintiff and other employees also were not paid for meal period premiums or rest period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and net wages earned on those wage statements.

41. These issues described rendered the wage statements inaccurate and confusing to Plaintiff and other employees, concealing the underpayments and presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and other employees as the sole documentary evidence of their respective earnings.

42. Plaintiff and other employees suffered injury in the form of confusion regarding amounts paid for hours worked, and in the form of concealment of the common payroll practices causing the violations and underpayment of wages and wage statement deficiencies as addressed in this Complaint.

43. Indeed, Plaintiff and, on information and belief, other employees were misinformed and misled by the wage statements wages, hours, rates, and earnings. As a result of the inaccuracies on the wage statements, Plaintiff and, on information and belief, other employees were led to believe that the net and gross wages reflected were a complete and accurate reflection of the wages actually earned under California law.

1 performed by employees because Defendants instruct them to do so. As a result, Plaintiff the Unpaid
2 Minimum or Regular Wage Subclass and others were not paid all wages owed to them.

3 50. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Unpaid
4 Minimum or Regular Wage Subclass Members at least the lawful minimum wage for each hour
5 worked in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197,
6 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the
7 applicable IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the
8 applicable orders), including payment at the lawful local and county minimum wage ordinances in
9 effect.

10 51. Defendants’ unlawful acts and omissions deprived Plaintiff and the Unpaid Minimum
11 or Regular Wage Subclass of minimum, regular, and overtime wages in amounts to be determined at
12 trial. Plaintiff and the Unpaid Minimum or Regular Wage Subclass are entitled to recover the full
13 amount of the unpaid wages, plus liquidated damages in an amount equal to the wages unlawfully
14 unpaid (and interest thereon), in addition to interest, statutory and civil penalties, attorneys’ fees, and
15 costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PAY ALL OVERTIME WAGES**

18 52. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
19 forth herein.

20 53. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
21 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
22 wages all overtime hours worked, and which further provide a private right of action for an employer’s
23 failure to pay all overtime compensation for overtime hours worked.

24 54. Throughout their employment with Defendants, Plaintiff and the Unpaid Overtime
25 Subclass were not paid based on the hours they actually worked. Plaintiff and the Unpaid Overtime
26 Subclass Members often worked over eight hours per day and over forty hours per week without being

1 paid at the proper overtime rate. Hourly employees were paid for the time they were scheduled, not
2 for the actual time they worked. Defendants were aware of the off-the-clock work performed by
3 employees because Defendants instructed them to do so while only paying them for the time they were
4 scheduled. As a result, Plaintiff and the Unpaid Overtime Subclass were not paid all wages owed to
5 them.

6 55. Plaintiff and the Unpaid Overtime Subclass were also not paid their proper “regular
7 rate of pay” for all overtime hours worked. Employees sometimes receive additional bonus pay for
8 working banquets or events. Defendants did not include the additional bonus pay in employees’
9 “regular rate of pay” for purposes of paying overtime hours. When employees work the banquets and
10 overtime hours during the same pay period, Defendants only pay employees at 1.5 times their standard
11 hourly rate rather than 1.5 times their lawful “regular rate of pay.”

12 56. Defendants failed in their affirmative obligation to pay Plaintiff and Unpaid Overtime
13 Subclass Members no less than one and one-half times their respective “regular rate of pay” for all
14 hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked
15 on the seventh day of work in any one workweek, and no less than twice their respective “regular rate
16 of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh
17 day of a workweek in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
18 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

19 57. Defendants’ unlawful acts and omissions deprived Plaintiff and the Unpaid Overtime
20 Subclass of overtime wages in amounts to be determined at trial. Plaintiff and the Unpaid Overtime
21 Subclass are entitled to recover the full amount of the unpaid overtime wages, in addition to interest,
22 statutory and civil penalties, attorneys’ fees, and costs to the extent permitted by law, including under
23 Labor Code section 1194.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 55. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
4 forth herein.

5 56. This cause of action is brought pursuant to the IWC Wage Orders (including section
6 11) and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided
7 complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private
8 right of action for an employer's failure to lawfully provide all meal periods and/or pay meal period
9 premiums at the lawful regular rate of compensation.

10 57. Defendants fail to provide compliant and timely meal periods. Defendants require
11 Plaintiff and the Meal Period Subclass to work through meal periods and to effectively take meal
12 periods, if any, "on duty." Plaintiff and the Meal Period Subclass rarely take uninterrupted meal
13 periods within the first five hours of work, if at all. Defendants force Plaintiff and the Meal Period
14 Subclass to involuntarily waive their meal breaks, to clock out prior to the end of the sixth hour, and
15 to continue to work after clocking out to make the payroll records appear as if employees could
16 properly waive such breaks. Defendants apply the same pressure to other employees and similarly fail
17 to provide other aggrieved employees with compliant meal periods. When Defendants did not provide
18 compliant meal periods, Defendants also failed to pay Plaintiff and the Meal Period Subclass a meal
19 period premium in violation of Labor Code section 226.7. As such, Defendants are liable for both
20 wages and meal period premiums.

21 58. Defendants willfully failed in their affirmative obligation to consistently provide
22 Plaintiff and Meal Period Subclass Members compliant, duty-free meal periods of not less than
23 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per
24 day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of
25 hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders
26 (the "Meal Periods" sections of the applicable orders).

59. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and Meal Period Subclass Members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the applicable orders).

60. Plaintiff and Meal Period Subclass Members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

61. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set forth herein.

62. This cause of action is brought pursuant to the IWC Wage Orders (including section 12) and Labor Code §§ 226.7, 516, and 1198, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

63. Due to Plaintiff's and the Rest Period Subclass's job responsibilities and pressures from Defendants, Plaintiff and the Rest Period Subclass often were not authorized or permitted to take rest periods. Plaintiff and the Rest Period Subclass rarely took rest breaks due to the non-stop demands of Defendants' operations and the understaffing. Defendants had a policy and practice of not paying rest period premiums to Rest Period Subclass Members who were unable to take rest periods.

64. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and Rest Period Subclass Members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor

Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

65. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and the Rest Period Subclass one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

66. Plaintiff and the Rest Period Subclass are entitled to recover the full amount of the rest period premiums owed, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES DURING EMPLOYMENT

67. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set forth herein.

68. This cause of action is pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer’s failure to comply with this obligation.

69. As explained above, Defendants underpaid Plaintiff and the Untimely Payment of Wages Subclass regular wages and overtime, and they failed to pay meal and rest period premiums. Defendants are separately liable for not paying the full amount owed to Plaintiff and the Untimely Payment of Wages Subclass each payday in violation of Labor Code sections 204 and/or 204b.

70. Defendants willfully failed in their affirmative obligation to timely pay all wages, including meal and rest premiums, earned by Plaintiff and Untimely Payment of Wages Subclass Members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

71. Defendants' unlawful acts and omissions deprived Plaintiff and the Untimely Payment of Wages Subclass of timely wages in amounts to be determined at trial. Plaintiff and the Untimely Payment of Wages Subclass are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

55. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set forth herein.

56. This cause of action is brought pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

57. Throughout the relevant statutory period, as a result of the other Labor Code violations at issue—including unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct "gross wages earned," as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of "gross wages earned" on those wage statements. Defendants also violated Labor Code Section 226(a) by failing to include the "total hours worked." Defendants also violated Labor Code section 226(a)(5) with respect to "net wages earned" for the same reasons, as the "net wages earned" are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

58. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and the Wage Statement Subclass Members resulting in injury to Plaintiff and Wage Statement Subclass Members. Specifically, the wage statements issued

1 to Plaintiff and Wage Statement Subclass Members did not accurately state each pay period all of the
2 information required by Labor Code § 226(a)(1)-(9).

3 59. Plaintiff and the Wage Statement Subclass cannot promptly and easily determine from
4 the wage statement alone the wages paid or earned without reference to other documents or
5 information. Defendants' unlawful acts and omissions deprived Plaintiff and the Wage Statement
6 Subclass of accurate itemized wage statements, causing confusion and concealing wage and premium
7 underpayments. The wage statements reflect a false statement of earnings and concealed the
8 underlying problems and underpayments throughout the relevant period.

9 60. As a result, Plaintiff and the Wage Statement Subclass are entitled to recover the
10 statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100
11 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per
12 employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including
13 under Labor Code section 226(e).

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO MAINTAIN ACCURATE RECORDS**

16 61. Plaintiff and the Class incorporate all outside paragraphs of this Complaint as if set
17 forth herein.

18 62. Defendants violated Labor Code section 1174 and the IWC wage orders by failing to
19 maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates,
20 and the wages paid to each employee.

21 63. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
22 to Plaintiff and Accurate Records Subclass Members for civil penalties as required by Labor Code
23 sections 1174.5 and/or 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent
24 permitted by law, including under Labor Code section 2699(g).

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1 **EIGHTH CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 72. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

4 73. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
5 the following “aggrieved employees” pursuant to the PAGA, codified as Labor Code section 2698 et
6 seq.: All current and former non-exempt employees who worked for Defendants in California at any
7 time from one year prior to the postmark date of the initial PAGA notice through date of trial.

8 74. Plaintiff reserves the right to amend, supplement, or add to this description of the
9 aggrieved employees according to proof.

10 75. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,
11 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
14 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
15 former employees pursuant to the procedures specified in Section 2699.3.”

16 76. Labor Code section 2699(f) provides: “For all provisions of this code except those for
17 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
18 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
19 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
20 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
21 for each subsequent violation.”

22 77. Labor Code section 558(a) provides: “Any employer or other person acting on behalf
23 of an employer who violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
25 to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to an amount

1 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100)
2 for each underpaid employee for each pay period for which the employee was underpaid in addition
3 to an amount sufficient to recover underpaid wages.”

4 78. Labor Code section 1197.1(a) provides: “Any employer or other person acting either
5 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to
6 any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
7 of the commission, shall be subject to a civil penalty ... and any applicable penalties imposed pursuant
8 to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred
9 dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid
10 ... and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation
11 for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
12 pay period for which the employee is underpaid regardless of whether the initial violation is
13 intentionally committed.”

14 79. Defendants have committed violations of the California Labor Code against Plaintiff
15 and other aggrieved employees as discussed herein. Plaintiff is an “aggrieved employee” within the
16 meaning of Labor Code section 2689 et seq. (*See Huff v. Securitas Security Services USA* (2018) 23
17 Cal. App. 5th 745.) Acting on behalf of other aggrieved employees, Plaintiff brings this representative
18 action against Defendants to recover the civil penalties due to Plaintiff individually and other
19 aggrieved employees and the State of California, according to proof, pursuant to Labor Code Sections
20 558 and 2699 (a) and (f), including but not limited to: (1) \$100 for each initial violation for each failure
21 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
22 pursuant to Labor Code section 210 for each failure to pay each employee, plus 25 percent of the
23 amount unlawfully withheld; (2) \$50 for each initial violation and \$100 for each subsequent violation
24 pursuant to Labor Code section 558 per employee per pay period, plus an amount sufficient to recover
25 the unpaid wages owed to each aggrieved employee; (3) \$100 for each initial violation and \$250 for
26 each subsequent violation pursuant to Labor Code section 1197.1 per employee per pay period; (4)

\$250 for each initial violation and \$1,000 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; and/or (5) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no specific penalty is provided, based on the following Labor Code violations:

- a. ***Unpaid Regular and Minimum Wages.*** Violations of Labor Code §§ 1182.12, 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime Wages.*** Violations of Labor Code §§ 510, 558, 1194, 1197.1, 1198, 1199; IWC Wage Orders.
- c. ***Unpaid Meal Period Premium Wages.*** Violations of Labor Code §§ 204, 210, 226.7, 512, 1198; IWC Wage Orders.
- d. ***Unpaid Rest Period Premium Wages.*** Violations of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- e. ***Untimely Payment of Wages During Employment.*** Violations of Labor Code §§ 204, 204b, 210.
- f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violations of Labor Code §§ 201, 202, 203, 256.
- g. ***Non-Compliant Wage Statements.*** Violations of Labor Code §§ 226, 226.3.
- h. ***Failure to Maintain Accurate Records.*** Violations of Labor Code §§ 558 and 1174; IWC Wage Orders.

80. Plaintiff and other aggrieved employees were subjected to all of the above violations, and they allege that Defendants maintain a policy and practice of similarly depriving other aggrieved employees of their rights.

81. Defendants committed the above violations as a result of their intentional policies, and therefore willfully failed in their affirmative obligation to pay Plaintiff and aggrieved employees their lawful wages in violation of Labor Code sections 1182.12, 1194, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders), to

1 provide meal and rest periods, to timely pay each employee their wages each pay period, to maintain
2 and provide accurate payroll records, and to timely pay each employee all wages owed upon their
3 termination or end of employment.

4 82. Plaintiff was compelled to retain counsel to file this court action to protect the interests
5 of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants to such
6 aggrieved employees and the State of California. Plaintiff has thereby incurred attorneys' fees and
7 costs, which Plaintiff is entitled to recover under California Labor Code Section 2699(g).

8 **PRAYER**

9 Plaintiff and the Class pray for judgment as follows:

- 10 a. For certification of this action as a class action;
- 11 b. For appointment of Plaintiff as the representative of the Class;
- 12 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 13 d. For recovery of damages in amount according to proof;
- 14 e. For all recoverable pre- and post-judgment interest;
- 15 f. For recovery of all civil and statutory penalties and liquidated damages;
- 16 g. For disgorgement of all amounts wrongfully obtained;
- 17 h. For restitution and injunctive relief;
- 18 i. For this action to be maintained as a representative action under the PAGA;
- 19 j. For Plaintiff and Plaintiff's counsel to be provided with all enforcement capability as
20 if the action were brought by the State of California or the California Division of Labor
21 Enforcement;
- 22 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 23 l. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
24 permitted by law, including under California Labor Code sections 218.5, 226, 1194,
25 2802, 2699(g) and Code of Civil Procedure section 1021.5; and
- 26 m. For such other relief the Court deems just and proper.

1 Dated: July 10, 2024

WALTMAN EMPLOYMENT LAW

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4 Rick A. Waltman

Matthew B. Shields

5 *Attorneys for Plaintiff Jose Manuel Garcia Reynoso*

EXHIBIT A

LWDA Notice

RICK WALTMAN LAW, APC

501 W. Broadway, Ste. 800
San Diego, CA 92101

(619) 320-5666
rick@rickwaltmanlaw.com

March 29, 2024

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

PAGA CLAIM NOTICE AND FILING FEE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL

Diane G. Powers
Casa Guadalajara, Inc.
4105 Taylor Street
San Diego, CA 92110

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Claimant Jose Manuel Garcia Reynoso (“Claimant”) and other aggrieved employees under California Labor Code section 2699.3 against Casa Guadalajara, Inc., along with the company’s owner(s), and any other related individuals or employer entities who may be later added (“Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

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FACTUAL STATEMENT

Defendants operate a restaurant in San Diego County, and employ hourly, non-exempt employees, who are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law. Additionally, Defendants and their agents are liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant Jose Manuel Garcia Reynoso has worked as a cook and busser for Casa Guadalajara in San Diego since 2009. During his employment, he and other employees have usually not been able to take meal or rest breaks in accordance with California law. Claimant usually never receives his 30 minute meal breaks at all, and they are interrupted or late if he does receive them. Claimant is often forced to clock out prior to the end of the 6th hour of work while continuing his work duties and forced to waive his meal break. If he does work over 6 hours without taking a break, he is scolded for not clocking out before the end of the 6th hour. He was not directed to take a break, or often even allowed to take a break. He was not scolded for not taking a break, but was only scolded for staying clocked in longer than 6 hours. Claimant’s supervisors know that he often performs work after clocking out because they observe him and direct him to do so. Claimant believes the company requires him and other employees to do this to make it appear as if employees can waive their breaks. Defendants thereby force employees to involuntarily waive their breaks and make them work off-the-clock.

Claimant has never voluntarily waived his right to meal breaks. Claimant has sometimes been paid meal period penalties, but not when clocked in for 6 hours or fewer. Claimant is not paid for interrupted, short, late, and most late meal periods.

Claimant also rarely receives an interrupted 10 minute rest break when he works shifts of 4 hours or more. The restaurant's workflow and staffing usually do not allow for uninterrupted rest break times for Claimant and most employees he works with. Claimant did not voluntarily waive his right to rest breaks. Claimant is informed and alleges that other employees are similarly denied their meal and rest breaks.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

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All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Regular and Overtime Wage Violations

Violation of Labor Code §§ 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked and failed to pay overtime for hours worked in excess of 8 hours per day, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at least minimum wage for all hours worked. Claimant and the aggrieved employees were not paid at their lawful overtime rate (i.e., time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-

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half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Like federal law, under the California Labor Code, the “regular rate” is not simply a straight time multiple of an employee’s base rate, but rather must include “all remuneration for employment paid to ... the employee,” except the eight items specifically enumerated in 29 U.S.C. § 207(e)(1)-(8). Remuneration like bonuses and incentives must be included in the hourly overtime rate. *See, e.g., Howell v. Advantage RN, LLC* (S.D. Cal. 2019) 401 F. Supp. 3d 1078, 1093 (“Such non-discretionary bonuses ... cannot be lawfully excluded from the regular rate”). Additionally, shift differentials and on-call pay (i.e. work paid at different rates) must also be factored in to the regular rate of pay used to calculate overtime for employees. *See, e.g., Bay Ridge Operating Co. v. Aaron* (1948) 334 U.S. 446, 469.

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Throughout his employment with Defendants, Claimant and other employees have not been paid based on the hours they actually worked. Due to being forced to clock out early while continuing to work, Claimant and aggrieved employees work regular and overtime hours for which they are not paid. Defendants are aware of the off-the-clock work performed by employees because Defendants instruct them to do so. As a result, Claimant and others were not paid all wages owed to them.

Claimant and others were also not paid their proper “regular rate of pay” for all overtime hours worked. Employees sometimes receive additional bonus pay for working banquets or events. Defendants did not include the additional bonus pay in employees’ “regular rate of pay” for purposes of paying overtime hours. When employees work the banquets and overtime hours during the same pay period, Defendants only pay employees at 1.5 times their standard hourly rate rather than 1.5 times their lawful “regular rate of pay.”

As a result, Claimant may recover civil penalties on behalf of themselves, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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Failure to Provide Meal Periods **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants failed to provide meal periods, or to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. The California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants fail to provide compliant and timely meal periods. Defendants require Claimant and aggrieved employees to work through meal periods and to effectively take meal periods, if any, "on duty." Claimant and other aggrieved employees rarely take uninterrupted meal periods within the first five hours of work, if at all. Defendants force Claimant and other employees to involuntarily waive their meal breaks, to clock out prior to the end of the 6th hour, and to continue to working after clocking out to make the payroll records appear as if employees could properly waive such breaks. Defendants apply the same pressure to other employees and similarly fail to provide other aggrieved employees with compliant meal periods. When Defendants did not provide compliant meal periods, Defendants also failed to pay Claimant and other aggrieved

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employees a meal period premium in violation of Labor Code section 226.7. As such, Defendants are liable for both wages and meal period premiums.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Provide Rest Periods

Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed provide rest periods, and to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Due to Claimant' and other employees' job responsibilities and pressures from Defendants, Claimant and the aggrieved employees often are not authorized or permitted to take rest periods. Claimant rarely took rest breaks due to the non-stop demands of Defendants' operations and the understaffing. Defendants has a policy and practice of not paying rest period premiums to aggrieved employees who were unable to take rest periods.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment

Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that

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Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees regular wages and overtime, and failed to pay meal and rest period premiums. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203**

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates,

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Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Defendants violated Labor Code section 226(a) by not listing the correct “gross wages earned and “total hours worked,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub. Moreover, in violation of Labor Code section 226(a)(9), the hours worked are incorrectly listed on Claimant’ and the aggrieved employees’ wage statements. For the reasons explained in the paragraph above, employees corresponding *hours* are not listed on their wage statements.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a Claimant seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’) (rejecting *Maldonado* defense for class claims).

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Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

As a result, Claimant may recover civil penalties in an individual capacity, and on behalf of the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records **Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders**

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs **Labor Code § 2699(g)**

Claimant was compelled to retain the services of counsel to file this court action to protect Claimant's own interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants **to Change Policies and Practices**

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los*

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Angeles (2004) 34 Cal.4th 604, 608 (citing *Graham v. Diamler-Chrysler Corp.* (2004) 34 Cal. 4th 553) (authorizing an award of catalyst attorneys' fees against the defendants).

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

RICK WALTMAN LAW
A Professional Corporation

A handwritten signature in black ink, appearing to read "Rick A. Waltman", with a long horizontal flourish extending to the right.

Rick A. Waltman