

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Alejandra Gamino

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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By M. Schwenke ,Deputy Clerk

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

ALEJANDRA GAMINO, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

NISHIKI DINER USA, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. 24CU000269C

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff ALEJANDRA GAMINO, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendant NISHIKI DINER USA, INC. and DOES 1 through 50,
4 inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action complaint brought under the California Private Attorneys
7 General Act (Labor Code sections 2968 *et seq.*).

8 2. Defendant underpaid the aggrieved employees’ wages by failing to compensate the
9 aggrieved employees for all hours worked.

10 3. Plaintiff and the aggrieved employees were required to travel to different restaurant
11 locations to cover shifts or pick up supplies while off-the-clock. Defendant did not compensate
12 Plaintiff or the aggrieved employees for the off-the-clock time spent traveling between restaurant
13 locations.

14 4. Defendant maintained an unlawful policy and practice of failing to pay split shift
15 premium wages to the aggrieved employees.

16 5. Defendant failed to provide, authorize, and/or permit the aggrieved employees to take
17 all meal and rest periods to which they were entitled. To the extent Defendant paid meal and rest period
18 premiums in the same pay period that the aggrieved employees earned shift differential pay or other
19 forms of non-excludable remuneration, Defendant underpaid these premiums by failing to factor all
20 forms of non-discretionary income into the regular rate of pay.

21 6. Defendant did not reimburse Plaintiff and the aggrieved employees for necessary
22 expenses incurred in furtherance of the aggrieved employees’ job duties.

23 7. Defendant is further liable for derivative claims for wage statements, untimely
24 payment, and other associated violations.

25 8. Defendant’s employment policies and practices as well as their payroll administration
26 systems, enabled and facilitated these violations on a company-wide basis with respect to the
27 aggrieved employees.
28

9. Plaintiff seeks to recover the underpaid damages plus associated penalties, interest, attorney's fees, and costs.

JURISDICTION & VENUE

10. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

12. This Court has jurisdiction over Defendant because, upon information and belief, Defendant have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

13. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendant conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Alejandra Gamino

14. Plaintiff Gamino is an individual over 18 years of age who worked for Defendant in California as a non-exempt employee from about March 2021 to March 2024. Plaintiff worked as an Assistant Manager.

15. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), Plaintiff brings the PAGA claims in this lawsuit exclusively in a non-individual, representative capacity seeking relief on behalf of the State of California and all aggrieved employees.

B. Defendants

16. Defendant Nishiki Diner USA, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

17. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

18. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

19. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

20. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

21. Plaintiff and the aggrieved employees worked for Defendant as non-exempt employees compensated on an hourly basis.

22. Defendant maintained an unlawful policy and practice of requiring Plaintiff and the aggrieved employees to travel between Defendant's restaurant locations while off-the-clock. This occurred almost every shift and pay period Plaintiff and the aggrieved employees worked, resulting in unpaid regular overtime wages across all aggrieved employees' tenure. Further Defendant failed to

1 pay overtime and double time at the “regular rate of pay” when Defendant paid aggrieved employees
2 non-discretionary pay and other forms of remuneration. For example, in the pay period from January
3 1, 2023 to January 14, 2023, Plaintiff earned additional remuneration in the amount of \$138.00.
4 However, Defendant failed to include those wages in the overtime rate when earned in the same pay
5 period, resulting in underpaid overtime wages.

6 23. Defendant maintained an unlawful policy and practice of failing to pay split shift
7 premium wages to the aggrieved employees. For example, in the payroll period from November 1,
8 2023, to November 30, 2023, Defendant scheduled Plaintiff and the aggrieved employees to work both
9 morning and evening shifts with approximately a two-hour break in between, resulting in a split shift.
10 Yet, Defendant did not pay Plaintiff and the aggrieved employees any split shift premium.

11 24. Defendant did not provide Plaintiff and the aggrieved employees with all sick leave
12 accrued based upon the actual hours that they worked. Plaintiff worked off-the-clock overtime hours
13 that were not accounted for when calculating an employee’s accrued paid sick leave. Further,
14 Defendant did not accrue Plaintiff and the aggrieved employees’ paid sick leave at the lawful rate. For
15 example, in the pay period from July 30, 2023 to August 12, 2023, Plaintiff earned additional
16 remuneration (“Misc. Pay”) in the amount of \$138.00. However, Defendant failed to include the
17 “Misc. Pay” in Plaintiff’s paid sick leave rate when earned in the same pay period.

18 25. Plaintiff and the aggrieved employees often suffered late, short, missed, and/or
19 interrupted meal and rest periods due to employee responsibilities, tight scheduling, and the constant
20 flow of business. Similarly, Plaintiff and the aggrieved employees were not authorized and permitted
21 to take all rest periods to which they were entitled. Plaintiff and aggrieved employees were required
22 to attend weekly meetings, during the two-hour window that the restaurant was closed and in between
23 their shifts. As a result, the aggrieved employees regularly missed meal periods. Further, Plaintiff was
24 regularly instructed to take rest periods at non-compliant times, at the start and end of her shift and
25 even instructed to recorded that she had taken a rest period when she had not taken that break.

26 26. Nonetheless, Defendant failed to pay the aggrieved employees all meal and rest period
27 premiums owed when they experienced such non-compliant meal and rest periods. To the extent
28 Defendant paid meal and rest period premiums in the same pay period that the aggrieved employees

1 earned shift differential pay or other forms of non-excludable remuneration, Defendant underpaid
2 these premiums by failing to factor all forms of non-discretionary income into the regular rate of pay.

3 27. Defendant also required Plaintiff and the aggrieved employees to incur necessary,
4 work-related costs, without adequate reimbursement. Plaintiff and other aggrieved employees were
5 required to use their personal cell phones to download applications that would allow them to place
6 supply orders for the restaurant and to communicate with coworkers regarding work schedules.
7 Defendant did not reimburse Plaintiff or the aggrieved employees for using their personal cell phones
8 to complete their job duties.

9 28. Further, Defendant required Plaintiff and the aggrieved employees to use their personal
10 vehicles to travel between restaurant locations to pick up supplies or cover shifts at understaffed
11 locations. However, Defendant failed to reimburse Plaintiff and the aggrieved employees for gas or
12 mileage incurred from traveling between different locations.

13 29. Finally, Defendant required Plaintiff and the aggrieved employees to obtain a food
14 handler's certification as a condition of employment but failed to reimburse employees for all expenses
15 incurred in connection with obtaining the certification as well as the time spent completing the course
16 while off-the-clock. Thus, in direct consequence of their job duties, Plaintiff and the aggrieved
17 employees unavoidably and necessarily incurred losses, expenditures, costs, and expenses that
18 Defendant did not reimburse as a matter of policy and practice.

19 30. These violations create derivative liability for failure to timely pay all wages owed each
20 payday or upon separation of employment. In fact, Defendant failed to pay Plaintiff her final wages in
21 a timely fashion. Plaintiff did not receive her final wages until seven days after her last date of
22 employment on March 15, 2024, despite her final day of work occurring on March 8, 2024.

23 31. As a result of the foregoing issues, Defendant failed to provide accurate itemized
24 wage statements to the aggrieved employees each pay period as a result of the policies set forth
25 above. Defendant failed to list the correct "gross wages earned" as the employees earned wages and
26 premiums that were not paid, resulting in an inaccurate reflection and recording of "gross wages
27 earned" on those wage statements. Likewise, Defendant failed to state on employee wage statements
28 each pay period the applicable hourly rates in effect and the number of hours worked at that rate as

1 Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead
2 depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

3 32. Further, Defendant's wage statements failed to accurately list employees' "total hours
4 worked" because they failed to account for the time Plaintiff and other aggrieved employees spent
5 traveling between restaurants. Thus, Plaintiff and other aggrieved employees cannot promptly and
6 easily determine from the wage statement alone the wages paid or earned without reference to other
7 documents or information. These wage statement violations are significant because they create
8 confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed
9 and paid, at what rate, the numbers of hours worked, and how those amounts were or should be
10 calculated. The wage statements reflect a false statement of earnings and concealed the underpayments
11 of employee wages.

12 **FIRST CAUSE OF ACTION**

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

14 **Violation of Labor Code §§ 2698 *et seq.***

15 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

16 33. All outside paragraphs of this Complaint are incorporated into this section.

17 34. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
18 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
19 codified as Labor Code section 2698 *et seq.*:

- 20 a. All current and former non-exempt employees who worked for Defendants in
21 California at any time from one year prior to the postmark date of the initial
22 PAGA notice through date of trial.

23 35. Plaintiff reserves the right to amend, supplement, or add to this description of the
24 aggrieved employees, according to proof.

25 36. The State of California, via the Labor and Workforce Development Agency
26 ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
27 *Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff
28 files suit is always the real party in interest."])

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

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

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

16 40. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
17 penalties under the PAGA.

18 41. On or about April 29, 2024, Plaintiff paid the requisite PAGA filing fee and provided
19 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
20 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
21 violations.

22 42. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
23 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
24 forth herein (the “PAGA notice”).

25 43. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
26 written PAGA notice from the LWDA.

1 44. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
2 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
3 providing a description of any actions taken to cure the alleged violations.

4 45. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
5 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
6 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
7 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

8 46. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
9 Complaint, Defendants committed the following violations and are liable for all corresponding civil
10 penalties:

- 11 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
12 1197, 1198; IWC Wage Orders.
- 13 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
14 Orders.
- 15 c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 16 d. ***Unpaid Split Shift Premium Wages.*** Violation of Labor Code § 1198; IWC
17 Wage Orders.
- 18 e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
19 1198; IWC Wage Orders.
- 20 f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
21 1198; IWC Wage Orders.
- 22 g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
23 §§ 204, 204b, 210.
- 24 h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
25 Labor Code §§ 201, 202, 203, 256.
- 26 i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 27 j. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.

k. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

47. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

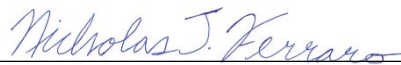
PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and
- g. For such other relief the Court deems just and proper.

Dated: July 9, 2024

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Alejandra Gamino

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

April 29, 2024

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

VIA CERTIFIED U.S. MAIL
- *Electronic Return Receipt* -

Nishiki Diner USA, Inc.
7670 Opportunity Rd Ste 102
San Diego, CA 92111

- *PAGA Notice & Filing Fee* -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **ALEJANDRA GAMINO** (“Plaintiff”) and all other “aggrieved employees” of the following “Defendant”:

NISHIKI DINER USA, INC.

Defendant shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. 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 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendant as a proxy and agent of the State of California under the 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; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendant, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendant complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendant is notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendant this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendant employed Plaintiff during the PAGA Period in the position of Assistant Manager from about March 2021 to March 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

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

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendant's violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage **Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders**

Defendant violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[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.” 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. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide 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.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

Defendant failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendant required Plaintiff and other employees to travel to different restaurant locations to cover shifts while off-the-clock. On these occasions, employees would be required to clock out at one location, drive to the second location (unpaid), and then clock in the second location. Defendant did not pay Plaintiff or the aggrieved employees for the hours spent travelling between locations.

Additionally, Plaintiff and the aggrieved employees were also required to complete a food handler training course while off-the-clock. Defendant did not compensate Plaintiff for the time spent completing the mandatory training.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendant violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

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-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.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. 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. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendant failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, Defendant failed to compensate Plaintiff and the aggrieved employees for all off-the-clock, overtime hours worked when they traveled to different restaurant locations to cover shifts and for time spent completing mandatory trainings. Therefore, when Plaintiff and aggrieved employees worked more than 8 hours, as a result of these policies and practices, this resulted in unpaid overtime wages.

Second, Defendant failed to pay overtime and double time at the “regular rate of pay.” When Defendant paid aggrieved employees additional non-discretionary pay and other forms of remuneration. Defendant failed to include non-discretionary income in the overtime and double time rates in the pay periods when employees worked overtime hours.

Defendant unlawfully paid overtime to Plaintiff and the aggrieved employees at 1.5x their straight hourly rate. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendant should have (but failed to) pay overtime “at a rate no less than ***one and one-half times the regular rate of pay*** for an employee” and “twice the regular rate of pay” for double time hours as required by the plain language of Labor Code section 510(a) and the IWC Wage Orders.

As illustrated below, Defendant paid overtime at the base rate rather than at the regular rate of pay.

Company Code R9 / FGL 22791293 Loc/Dept 01/MM Nishiki Diner USA Inc 3760 Convo St Suite 219 San Diego, CA 92111	Number 1357181 Page 1 of 1	Earnings Statement Period Starting: 01/01/2023 Period Ending: 01/14/2023 Pay Date: 01/20/2023	
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Taxable Filing Status: Married Exemptions/Allowances: Federal: Std W/H Table State: 0 Local: 0 Social Security Number: XXX-XX-XXXX	Tax Override: Federal: State: Local:	Alejandra Gamino 
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<table border="0"> <tr> <th>Earnings</th> <th>rate</th> <th>hours/units</th> <th>this period</th> <th>year to date</th> </tr> <tr> <td>Regular</td> <td>18.4000</td> <td>72.00</td> <td>1324.80</td> <td>2488.79</td> </tr> <tr> <td>Overtime</td> <td>27.6000</td> <td>13.17</td> <td>363.49</td> <td>700.35</td> </tr> <tr> <td>Credit card tips owed</td> <td></td> <td>0.00</td> <td>501.65</td> <td>1500.80</td> </tr> <tr> <td>Misc pay</td> <td></td> <td>0.00</td> <td>138.00</td> <td>288.00</td> </tr> <tr> <td>Gross Pay</td> <td></td> <td></td> <td>\$2,327.94</td> <td>\$4,977.94</td> </tr> </table> <table border="0"> <tr> <th>Statutory Deductions</th> <th>this period</th> <th>year to date</th> </tr> <tr> <td>Federal Income</td> <td>-115.35</td> <td>255.68</td> </tr> <tr> <td>Social Security</td> <td>-144.33</td> <td>308.63</td> </tr> <tr> <td>Medicare</td> <td>-33.75</td> <td>72.18</td> </tr> <tr> <td>California State Income</td> <td>-86.36</td> <td>191.19</td> </tr> <tr> <td>California State DI</td> <td>-20.95</td> <td>44.80</td> </tr> <tr> <td>Net Pay</td> <td>\$1,927.20</td> <td></td> </tr> </table>	Earnings	rate	hours/units	this period	year to date	Regular	18.4000	72.00	1324.80	2488.79	Overtime	27.6000	13.17	363.49	700.35	Credit card tips owed		0.00	501.65	1500.80	Misc pay		0.00	138.00	288.00	Gross Pay			\$2,327.94	\$4,977.94	Statutory Deductions	this period	year to date	Federal Income	-115.35	255.68	Social Security	-144.33	308.63	Medicare	-33.75	72.18	California State Income	-86.36	191.19	California State DI	-20.95	44.80	Net Pay	\$1,927.20		<table border="0"> <tr> <th>Other Benefits and Information</th> <th>this period</th> <th>year to date</th> </tr> <tr> <td>Sick</td> <td></td> <td></td> </tr> <tr> <td>- Carry Over</td> <td></td> <td>58.16</td> </tr> <tr> <td>- Accrued Hours</td> <td>2.84</td> <td>102.11</td> </tr> <tr> <td>- Taken Hours</td> <td>0.00</td> <td>68.83</td> </tr> <tr> <td>- Balance</td> <td></td> <td>33.28</td> </tr> <tr> <td>Total Hours Worked</td> <td>85.17</td> <td>166.85</td> </tr> </table> <table border="0"> <tr> <th>Deposits</th> <th>account number</th> <th>transit/ABA</th> <th>amount</th> </tr> <tr> <td></td> <td>XXXXXX</td> <td>XXXXXXXXXX</td> <td>1927.20</td> </tr> </table> Important Notes Basis of pay: Hourly If no CA SPSL 22 is listed, you have used zero hours.	Other Benefits and Information	this period	year to date	Sick			- Carry Over		58.16	- Accrued Hours	2.84	102.11	- Taken Hours	0.00	68.83	- Balance		33.28	Total Hours Worked	85.17	166.85	Deposits	account number	transit/ABA	amount		XXXXXX	XXXXXXXXXX	1927.20
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Plaintiff's Wage Statement with a Pay Date of January 20, 2023 showing that she earned additional remuneration labeled as "Misc. Pay"

Here, Plaintiff earned additional remuneration ("Misc. Pay") in the amount of \$138.00 for working as an Assistant Manager. However, Defendant failed to include the Misc. Pay in the overtime rate when earned in the same pay period, resulting in underpaid overtime wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave Violation of Labor Code §§ 246 through 248.7

Defendant violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth

in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Specifically, as illustrated on the below wage statement from Plaintiff, Defendant paid sick leave at the base rate rather than the regular rate of pay when Plaintiff and the aggrieved employees earned additional remuneration in the same pay period:

<u>Earnings</u>	<u>rate</u>	<u>hours/units</u>	<u>this period</u>	<u>year to date</u>
Regular	18.4000	59.47	1094.25	22698.98
Regular	18.4000	4.53	83.35	
Overtime	27.6000	12.52	345.55	6504.10
Credit card tips owed		0.00	450.70	9208.75
Sick	18.4000	16.00	294.40	1177.60
Misc pay		0.00	138.00	2358.00
Gross Pay			\$2,406.25	\$41,947.43

Extract from Plaintiff’s Wage Statement with a Pay Date of August 18, 2023

Here, Plaintiff earned additional remuneration (“Misc. Pay”) in the amount of \$138.00 for working as an Assistant Manager. However, Defendant failed to include the Misc. Pay in Plaintiff’s paid sick leave rate when earned in the same pay period.

The failure to calculate and pay sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 et seq. was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Plaintiff may recover civil penalties as an individual 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.

Unpaid Split Shift Premium Wages
Violation of Labor Code § 1198; IWC Wage Orders

Defendant violated Labor Code sections 1198 and Section 4(C) (Minimum Wages) of the applicable IWC Wage Orders concerning split shift premium wages with respect to the aggrieved employees.

Section 4(C) of the applicable IWC Wage Orders requires that when “an employee works a split shift” the employer must pay one additional hour’s pay at the minimum wage “in addition to the minimum wage for that workday.” According to the IWC Wage Orders’ definition sections, a “split shift” is defined as a work schedule that is “interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.” Labor Code section 1198 authorizes enforcement of the split shift provisions of the IWC Wage Orders.

Defendant maintained an unlawful policy and practice of failing to pay split shift premium wages to the aggrieved employees. As illustrated below, Defendant scheduled Plaintiff and aggrieved employees to work both morning and evening shifts with approximately a two-hour break in between, resulting a split shift. Yet, Defendant did not pay Plaintiff and aggrieved employees any split shift premiums.

MENYA ULTRA MIRA MESA				
Payroll Period	11/01/2023 To 11/30/2023			
Name	Clock in date	Clock in ti	Clock out date	Clock out
Alejandra Gamino	November 3 2023	10:01am	November 3 2023	2:22pm
Alejandra Gamino	November 3 2023	4:00pm	November 3 2023	10:00pm
Alejandra Gamino	November 4 2023	10:01am	November 4 2023	2:37pm
Alejandra Gamino	November 4 2023	4:30pm	November 4 2023	9:42pm
Alejandra Gamino	November 5 2023	10:04am	November 5 2023	2:18pm
Alejandra Gamino	November 5 2023	4:30pm	November 5 2023	9:17pm
Alejandra Gamino	November 6 2023	10:03am	November 6 2023	2:18pm
Alejandra Gamino	November 6 2023	4:29pm	November 6 2023	9:14pm
Alejandra Gamino	November 7 2023	10:05am	November 7 2023	2:01pm
Alejandra Gamino	November 7 2023	4:28pm	November 7 2023	9:25pm
Alejandra Gamino	November 10 2023	10:03am	November 10 2023	2:32pm
Alejandra Gamino	November 10 2023	4:30pm	November 10 2023	9:30pm
Alejandra Gamino	November 11 2023	10:15am	November 11 2023	2:30pm
Alejandra Gamino	November 11 2023	4:30pm	November 11 2023	9:58pm
Alejandra Gamino	November 12 2023	10:03am	November 12 2023	2:17pm
Alejandra Gamino	November 12 2023	4:30pm	November 12 2023	9:32pm

Extract of Plaintiff's time records showing that all of Plaintiff's shift during that period were split shifts.

As reflected in Plaintiff's time records above, the morning shift covered from about 10:00 a.m. to 2:30 p.m. and the evening shift covered from about 4:30 p.m. to 9:30 p.m. Plaintiff was scheduled to work a split shift every day. However, as shown in Plaintiff's wage statements for the same time period she was scheduled to work split shifts, she was not paid any split shift premiums despite Defendant establishing a work schedule that was interrupted by non-paid, non-working periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code sections 558 (\$50/\$100), 1199 / "Penalties" section of the IWC Wage Orders, and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendant violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute 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 one additional 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. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, 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.

Plaintiff and other aggrieved employees routinely experienced missed, late, short, and interrupted meal periods to keep up with the high demands of the job. On information and belief, Defendant maintained a practice of understaffing shifts which resulted in Plaintiff and aggrieved employees missing meal periods. Further, Defendant maintained a practice of scheduling weekly, mandatory team meetings in the two-hour window that the restaurant was closed and in between employee shifts. As a result, Plaintiff and aggrieved employees were deprived of a meal period on those days and were required to work two, consecutive shifts without the opportunity to enjoy a meal period.

To the extent Defendant paid meal period premiums in the same pay period that the aggrieved employees earned shift differential pay or other forms of non-excludable remuneration,

Plaintiff believes and alleges that Defendant underpaid these premiums by failing to factor all forms of non-discretionary income into the regular rate of pay.

As a result, Plaintiff may recover civil penalties as an individual 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.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendant violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional 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"). 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. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Plaintiff and other aggrieved employees routinely experienced missed and non-compliant rest periods to keep up with the high demands of the job. On information and belief, Defendant maintained a practice of understaffing shifts which resulted in Plaintiff and aggrieved employees missing rest periods. Additionally, Plaintiff was often instructed to take a non-compliant rest period, either before or after a shift because there would be insufficient time to take a compliant rest period during her shift. Moreover, Plaintiff was often directed to record that she had taken a rest break although she had not actually taken that break.

On information and belief, Defendant had a policy and practice of not paying rest period premiums to employees who were not authorized to take complaint rest periods.

As a result, Plaintiff may recover civil penalties as an individual 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

Defendant violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” 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 “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.

Because Defendant failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendant violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendant violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendant failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual 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, and 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, 256

Defendant violated Labor Code sections 201, 202, and 203 with respect to the 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 additional compensation.

Defendant failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. As illustrated below, Plaintiff did not receive her final wages until seven days after her final date of employment.

Company Code	Loc/Dept	Number	Page	Earnings Statement		ADP	
L87YZG 28189995	01/MM	565648	1 of 1				
Nishiki Diner USA Inc 7670 Opportunity Rd Ste 102 San Diego, CA 92111-2222				Period Starting: 02/25/2024 Period Ending: 03/09/2024 Pay Date: 03/15/2024			
Taxable Filing Status: Married Exemptions/Allowances: Federal: Std W/H Table State: 0 Local: 0 Social Security Number: XXX-XX-2756				Tax Override: Federal: 0.00 Addnl State: Local:		Alejandra Gamino	
Earnings	rate	hours/units	this period	year to date	Other Benefits and Information	this period	year to date
Regular	23.0000	64.53	1484.19	9123.64	Sick		
Overtime	34.5000	13.93	480.59	2750.01	- Carry Over		2.71
Credit card tips owed		0.00	672.00	4132.00	- Accrued Hours	2.61	5.32
Sick			0.00	671.83	- Taken Hours	0.00	0.00
					- Balance		5.32
Gross Pay			\$2,636.78	\$16,677.48	Total Hours Worked	78.46	476.39
Statutory Deductions			this period	year to date	Deposits		
Federal Income			-144.57	948.14	account number	transit/ABA	amount
Social Security			-163.48	1034.00	XXXXXX2814	XXXXXXXXXX	1851.63
Medicare			-38.23	241.82	XXXXXX1420	XXXXXXXXXX	300.00
California State Income			-109.87	725.98	Important Notes		
California State DI			-29.00	183.45	Basis of pay: Hourly		
Net Pay			\$2,151.63				

Plaintiff's final wage statement showing that her final wages were paid on March 15, 2024 via direct deposit.

Plaintiff's last day of work for Defendant was March 8, 2024, however, she did not receive her final wages until the end of the pay period on March 15, 2024. As a result, Defendant violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California 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.

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

Defendant violated Labor Code sections 226(a) and 226.3 with respect to the 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.

Defendant failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendant violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendant failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendant failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Defendant violated Labor Code section 226(a)(2) by failing to accurately list employees’ “total hours worked,” as the wage statements did not accurately include the uncompensated time Plaintiff and other aggrieved employees worked due to Defendant’s policy and practice of requiring employees to travel between restaurant locations while off-the-clock.

Plaintiff 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 sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

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

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendant violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendant required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Defendant required Plaintiff and aggrieved employees to use their personal cell phones to complete necessary work tasks. For example, Plaintiff was required to use her personal cell phone to download two applications, Choco and Butter, to place supply orders for the restaurant. Plaintiff was also required to use her personal cell phone to communicate with co-workers regarding work schedules. Defendant did not reimburse Plaintiff for using her personal cell phone to complete her job duties.

Further, Defendant required Plaintiff and the aggrieved employees to travel from one restaurant location to pick up supplies or cover shifts at other understaffed locations. Plaintiff and the aggrieved employees drove from one store to the next in their personal vehicles but were not reimbursed for gas or mileage incurred traveling to the different locations. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that Defendant did not reimburse as a matter of policy and practice. At all relevant times, Defendant was required to comply with the reimbursement mandate of Labor Code section 2802.

Finally, Defendant required Plaintiff and the aggrieved employees to obtain food handler’s certifications as a condition of employment, but failed to reimburse employees for all expenses incurred in connection with obtaining the certification.

As a result, Plaintiff may recover civil penalties as an individual 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.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendant violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendant failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys’ Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys’ fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all Defendant and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendant’s written employment and payroll policies and handbooks; the aggrieved employees’ personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly

scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

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

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendant may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in black ink, appearing to read "Mariela Romo". The signature is fluid and cursive, with a large initial "M" and a distinct "R" at the end.

Mariela Romo

Cc Plaintiff Alejandra Gamino

Defendant's Human Resources Representative
hr@menya-ultra.com