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Case #24CV438841
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

BRYAN ZAMORANO, individually, and
on behalf of other members of the general
public similarly situated, and as an
aggrieved employee pursuant to the Private
Attorneys General Act (“PAGA”),

Plaintiff,

vs.

TKS RESTAURANTS, LLC, a California
limited liability company; TKS
RESTAURANTS, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 24CV438841

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

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

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

3. Venue is proper in this Court, because Defendants employ persons within the County of Santa Clara, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least three (3) locations within the County of Santa Clara, including Defendants' locations in San Jose (5110 Cherry Avenue #30, San Jose, California 95118; 1078 East Brokaw Road, San Jose, California 95131) and Santa Clara (3938 Rivermark Plaza, Santa Clara, California 95054). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County and Plaintiff could bring this action to recover penalties in Santa Clara County, venue is proper.

THE PARTIES

4. Plaintiff Bryan Zamorano is a resident of Irvine, California. Defendants employed Plaintiff as an hourly paid, non-exempt Line Cook from approximately June 2023 to November 2023. Plaintiff worked for Defendants at their restaurant located at 14431 Culver Drive, Irvine, California. During his employment, Plaintiff typically worked five (5) to eight (8) or more hours per day and two (2) to five (5) days per week. Plaintiff's primary job duties included, without limitation, preparing food, taking orders, dishwashing, cleaning restrooms, and cashiering.

5. TKS RESTAURANTS, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

6. TKS RESTAURANTS, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees

are engaged throughout this county and the State of California.

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

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

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, TKS RESTAURANTS, LLC; TKS RESTAURANTS, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “THE KEBAB SHOP”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

12. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the wages, hours, working conditions, and employment status of Plaintiff and class members. Each Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and

1 class members to work and/or “engaged” Plaintiff and class members so as to create a
2 common-law employment relationship. As joint employers of Plaintiff and class members,
3 Defendants are jointly and severally liable for the civil penalties and all other relief available
4 to Plaintiff and class members under the law.

5 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
6 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
7 members because Defendants have:

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

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

26 15. TKS RESTAURANTS, LLC; TKS RESTAURANTS, INC.; and DOES 1
27 through 10 are therefore alter egos of each other.

28 16. Adherence to the fiction of the separate existence of Defendants would permit

1 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
2 from liability for the wrongful acts committed by them under the name THE KEBAB SHOP.

3 17. Plaintiff further alleges, upon information and belief, that Defendants TKS
4 RESTAURANTS, LLC and TKS RESTAURANTS, INC. are alter egos of each other for the
5 following reasons:

- 6 (a) On the California Secretary of State's website
7 (<https://bizfileonline.sos.ca.gov/>), TKS RESTAURANTS, LLC and
8 TKS RESTAURANTS, INC. share the same principal address and
9 mailing address of "12600 HILL COUNTRY BLVD, R-275 AUSTIN,
10 TX 78738";
- 11 (b) According to Statement of Information forms filed with the California
12 Secretary of State, TKS RESTAURANTS, LLC and TKS
13 RESTAURANTS, INC. share the same street address of California
14 Office of Corporation of "9450 MIRA MESA BLVD, SUITES E AND
15 F SAN DIEGO, CA 92126";
- 16 (c) According to Statement of Information forms filed with the California
17 Secretary of State, TKS RESTAURANTS, LLC and TKS
18 RESTAURANTS, INC. share the same officers, directors, and/or
19 managers or members, including, but not limited to: Arian Baryalai,
20 who serves as Chief Executive Officer and Manager or Member of TKS
21 RESTAURANTS, LLC; and Director, Chief Executive Officer,
22 Secretary, and Chief Financial Officer of TKS RESTAURANTS, INC.;
- 23 (d) On the California Secretary of State's website, TKS RESTAURANTS,
24 LLC and TKS RESTAURANTS, INC. share the same agent for service
25 of process, Tracy A. Warren; and
- 26 (e) On information and belief, TKS RESTAURANTS, LLC and TKS
27 RESTAURANTS, INC. utilize the same standardized employment
28 forms and issue the same employment policies.

1 **GENERAL ALLEGATIONS**

2 18. Defendants operate a fast-casual Mediterranean restaurant chain, with at least
3 31 restaurants in California. Upon information and belief, Defendants maintain a single,
4 centralized Human Resources (“HR”) department at their corporate headquarters in Austin,
5 Texas, which is responsible for the recruiting and hiring of new employees, and
6 communicating and implementing Defendants’ company-wide policies, including timekeeping
7 policies and meal and rest period policies, to employees throughout California.

8 19. In particular, Plaintiff and class members, on information and belief, received
9 the same standardized documents and/or written policies. Upon information and belief, the
10 usage of standardized documents and/or written policies, including new-hire documents,
11 indicate that Defendants dictated policies at the corporate level and implemented them
12 company-wide, regardless of their employees’ assigned locations or positions.

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

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

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

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

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

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

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

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

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and class members were entitled to rest periods in
27 accordance with the California Labor Code and applicable IWC Wage Order or payment of
28 one (1) additional hour of pay at their regular rates of pay when they were not authorized and

1 permitted to take a compliant rest period and that Plaintiff and class members were not
2 authorized and permitted to take compliant rest periods or provided with payment of one (1)
3 additional hour of pay at their regular rates of pay when they were not authorized and
4 permitted to take a compliant rest period.

5 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive complete and
7 accurate wage statements in accordance with California law. In violation of the California
8 Labor Code, Plaintiff and class members were not provided complete and accurate wage
9 statements.

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

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to timely payment of all
16 wages earned upon termination of employment. In violation of the California Labor Code,
17 Plaintiff and class members did not receive payment of all wages due, including, but not
18 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick
19 leave pay, within permissible time periods.

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

26 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and/or class members were entitled to receive sick leave
28 benefits to be paid at a regular rate of pay, that included, as eligible income, all income

1 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
2 violation of the California Labor Code, Defendants failed to include all forms of remuneration
3 in calculating the regular rate of pay for sick leave pay.

4 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive full
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive full reimbursement of applicable
8 business-related expenses and costs incurred.

9 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that Defendants had a duty to provide
11 Plaintiff and class members with written notice of the material terms of their employment with
12 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 37. At all times herein set forth, PAGA provides that any provision of law under
21 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
22 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
23 violations of the California Labor Code and applicable IWC Wage Order may, as an
24 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
25 themselves and other current or former employees pursuant to procedures outlined in
26 California Labor Code section 2699.3.

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

1 alleged violations was committed.”

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

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

- 8 (a) The aggrieved employee or representative shall give written notice by
9 online filing with the LWDA and by certified mail to the employer of
10 the specific provisions of the California Labor Code alleged to have
11 been violated, including the facts and theories to support the alleged
12 violation.
- 13 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
14 2699.3(a) and any employer response to that notice shall be
15 accompanied by a filing fee of seventy-five dollars (\$75).
- 16 (c) The LWDA shall notify the employer and the aggrieved employee or
17 representative by certified mail that it does not intend to investigate the
18 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
19 the postmark date of the aggrieved employee’s notice. Upon receipt of
20 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
21 (65) calendar days of the postmark date of the aggrieved employee’s
22 notice, the aggrieved employee may commence a civil action pursuant
23 to California Labor Code section 2699 to recover civil penalties.

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

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

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

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

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

17 42. On May 31, 2024, Plaintiff provided written notice by online filing to the
18 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
19 Code alleged to have been violated, including facts and theories to support the alleged
20 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
21 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
22 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
23 Plaintiff PAGA Case Number LWDA-CM-1031454-24. A true and correct copy of Plaintiff's
24 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

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

1 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
2 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a),
3 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

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

19 48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
20 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
21 private attorney general, seeks assessment and collection of civil penalties for himself, all
22 other aggrieved employees, and the State of California against Defendants for violations of
23 California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d),
24 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

25 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

- 16 (a) Whether Defendants required Plaintiff and class members to work over
17 eight (8) hours per day, over twelve (12) hours per day, or over forty
18 (40) hours per week and failed to pay all legally required overtime
19 compensation to Plaintiff and class members;
- 20 (b) Whether Defendants failed to pay Plaintiff and class members at least
21 minimum wages for all hours worked;
- 22 (c) Whether Defendants failed to provide Plaintiff and class members meal
23 periods;
- 24 (d) Whether Defendants failed to authorize and permit Plaintiff and class
25 members to take rest periods;
- 26 (e) Whether Defendants provided Plaintiff and class members with
27 complete and accurate wage statements as required by California Labor
28 Code section 226(a);

- 1 (f) Whether Defendants maintained accurate payroll records as required by
2 California Labor Code section 1174(d);
- 3 (g) Whether Defendants failed to pay earned overtime wages, minimum
4 wages, and/or meal and rest period premiums due to Plaintiff and class
5 members upon their discharge;
- 6 (h) Whether Defendants failed to timely pay overtime wages, minimum
7 wages, and/or meal and rest period premiums to Plaintiff and class
8 members during their employment;
- 9 (i) Whether Defendants failed to reimburse Plaintiff and class members for
10 necessary and required business-related expenditures and/or losses
11 incurred by them in the scope of their employment;
- 12 (j) Whether Defendants failed to provide written notice of information
13 material to Plaintiff's and class members' employment with Defendants;
- 14 (k) Whether Defendants engaged in unlawful and unfair business practices
15 in violation of California Business & Professions Code sections 17200,
16 *et seq.*; and
- 17 (l) The appropriate amount of damages, restitution, or monetary penalties
18 resulting from Defendants' violations of California law.

19 56. There is a well-defined community of interest in the litigation and the class
20 members are readily ascertainable:

- 21 (a) Numerosity: The class members are so numerous that joinder of all
22 members would be unfeasible and impractical. The membership of the
23 entire class is unknown to Plaintiff at this time; however, the class is
24 estimated to be greater than one hundred (100) individuals and the
25 identity of such membership is readily ascertainable by inspection of
26 Defendants' employment records.
- 27 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
28 protect the interests of each class member with whom he has a well-

1 defined community of interest, and Plaintiff's claims (or defenses, if
2 any) are typical of all class members as demonstrated herein.

3 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
4 protect the interests of each class member with whom he has a well-
5 defined community of interest and typicality of claims, as demonstrated
6 herein. Plaintiff acknowledges that he has an obligation to make known
7 to the Court any relationship, conflicts or differences with any class
8 member. Plaintiff's attorneys, the proposed class counsel, are versed in
9 the rules governing class action discovery, certification, and settlement.
10 Plaintiff has incurred, and throughout the duration of this action, will
11 continue to incur costs and attorneys' fees that have been, are, and will
12 be necessarily expended for the prosecution of this action for the
13 substantial benefit of each class member.

14 (d) Superiority: The nature of this action makes the use of class action
15 adjudication superior to other methods. A class action will achieve
16 economies of time, effort, and expense as compared with separate
17 lawsuits, and will avoid inconsistent outcomes because the same issues
18 can be adjudicated in the same manner and at the same time for the
19 entire class.

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

1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

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

6 58. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
8 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
9 shall be the . . . standard conditions of labor for employees. The employment of any employee
10 . . . under conditions of labor prohibited by the order is unlawful.”

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

15 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

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

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

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

3 63. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 64. First, during the relevant time period, Defendants had, and continue to have, a
9 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
10 members from recording hours worked that were outside of their scheduled shifts in order to
11 limit the amount of overtime employees could accrue. Defendants' "Time-Keeping System"
12 policy states, in part, "[o]vertime work must always be approved before it is performed."
13 Further, as also stated in Defendants Time-Keeping System policy, "[n]onexempt employees
14 should clock-in no more than 5 minutes prior to their scheduled starting time nor stay more
15 than 5 minutes after their scheduled stop time without expressed, prior authorization from
16 their supervisor." Defendants' timekeeping policies led Plaintiff and class members to work
17 off-the-clock outside of their scheduled shift times. For example, at least twice per week,
18 Plaintiff was required to perform restaurant closing duties after clocking out at his scheduled
19 shift end time, including sweeping, mopping, turning off the lights, and setting the restaurant's
20 alarm, which could take from about 10 minutes. As further examples, Plaintiff and class
21 members were required to answer work-related phone calls and text messages from
22 Defendants' supervisors and also spend time reviewing and approving their timecards outside
23 of their scheduled shifts or on their days off. For instance, Plaintiff would often receive calls
24 and text messages on his days off from his supervisor reminding him to review and approve
25 his timecard for the week and was often required to spend time reviewing and approving his
26 timesheets on his mobile phone before clocking in for his shift. However, Plaintiff was not
27 allowed to record this time spent working. Additionally, on information and belief,
28 Defendants' management would alter and/or falsify time records to shave off time Plaintiff

1 spent working in order to limit overtime accrual.

2 65. Second, upon information and belief, Defendants had, and continue to have, a
3 company-wide policy and/or practice of strictly staffing their locations based on the labor
4 hours allocated by each location's labor or payroll budget set by the corporate office.
5 Defendants' uniform use of labor budgeting and understaffing resulted in a failure to provide
6 Plaintiff and class members with adequate meal period coverage, because there were too few
7 employees on duty to handle the workload and attend to customers, which included preparing
8 walk-in orders, food delivery application orders, and large catering orders. Because
9 Defendants did not employ or staff a sufficient number of employees to meet customer
10 demand, there was no one available to relieve employees needing meal period coverage, and
11 Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods
12 during shifts when they were entitled to receive a meal period. Moreover, Defendants had a
13 practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff and
14 class members to not be relieved of their duties for compliant meal periods. For example,
15 Plaintiff worked through some of his meal periods due to lack of coverage and to keep up with
16 the demands of work. Additionally, on at least five (5) instances, Plaintiff's meal periods
17 were interrupted because he was required to attend to walk-in customers during his meal
18 periods, for the same reasons mentioned above.

19 66. Third, on information and belief, because Defendants frowned upon employees
20 accruing meal period penalties, Defendants' management pressured employees to clock out
21 for meal periods to reflect compliant meal periods, even when they had not received compliant
22 meal periods. Thus, Defendants did not record all hours worked during meal periods, and
23 Plaintiff and class members performed work during meal periods for which they were not
24 paid.

25 67. Defendants knew or should have known that as a result of these company-wide
26 practices and/or policies, Plaintiff and class members were performing their assigned duties
27 off-the-clock before and after their scheduled shifts and during meal periods, and were
28 suffered or permitted to perform work for which they were not paid. Because Plaintiff and

1 class members sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a
2 week or more, some of this off-the-clock work qualified for overtime premium pay.
3 Therefore, Plaintiff and class members were not paid overtime wages for all of the overtime
4 hours they actually worked.

5 68. Defendants' failure to pay Plaintiff and class members the balance of overtime
6 compensation as required by California law, violates the provisions of California Labor Code
7 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
8 members are entitled to recover from Defendants their unpaid overtime compensation, as well
9 as interest, costs, and attorneys' fees.

10 **SECOND CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 12 **Minimum Wages** 13 **(Against all Defendants)**

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

16 70. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
18 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
19 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as "the
20 time during which an employee is subject to the control of an employer, and includes all the
21 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
22 Code Regs. Tit. 8, § 11050(2)(L) (defining "Hours Worked").

23 71. First, as set forth above, as a result of Defendants' policy of limiting the
24 amount of overtime employees could accrue, Defendants required Plaintiff and class members
25 to perform work off-the-clock. As stated, Defendants required Plaintiff and class members to
26 perform work off-the-clock outside of their scheduled shift start and end times and on days
27 off, including completing store closing duties, answering phone calls and text messages from
28 Defendants' supervisors, and spending time reviewing and approving their timecards.

1 Additionally, on information and belief, Defendants' management would alter and/or falsify
2 time records to shave off time Plaintiff spent working in order to limit overtime accrual. As a
3 result, Defendants failed to track this time that Plaintiff and class members spent working off-
4 the-clock, and thus, Plaintiff and class members received no compensation for this time.

5 72. Second, as set forth above, due to Defendants' company-wide policies and/or
6 practices of utilizing labor budgets, understaffing their locations, assigning heavy workloads,
7 and failing to adhere to a schedule for meal periods, Plaintiff and class members were
8 impeded from taking all uninterrupted meal periods to which they were entitled and were
9 required to work off-the-clock. Further, to limit the meal penalties that Defendants would
10 otherwise owe, Defendants pressured Plaintiff and class members to clock out for meal
11 periods to reflect compliant meal periods, but required them to continue working, time for
12 which they were not paid.

13 73. Defendants did not pay minimum wages for all hours worked by Plaintiff and
14 class members. To the extent that these off-the-clock hours did not qualify for overtime
15 premium payment, Defendants did not pay at least minimum wages for those hours worked
16 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
17 1198.

18 74. Defendants' failure to pay Plaintiff and class members minimum wages violates
19 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
20 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from
21 Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and
22 interest thereon.

23 **THIRD CAUSE OF ACTION**

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

25 **Violations**

26 **(Against all Defendants)**

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

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

8 77. At all relevant times herein set forth, California Labor Code sections 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

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

17 79. First, during the relevant time period, Defendants had, and continue to have, a
18 company-wide policy and/or practice of understaffing locations due to labor budgeting and/or
19 limited payroll allocation, which, combined with the assignment of heavy workloads,
20 including preparing walk-in orders, food delivery application orders, and large catering orders,
21 has resulted in a lack of meal period coverage and prevented Plaintiff and class members from
22 taking all timely, uninterrupted meal periods to which they were entitled. Moreover,
23 Defendants also failed to adhere to a schedule for meal periods, which further caused Plaintiff
24 and class members to not be relieved of their duties for compliant meal periods. As a result,
25 Plaintiff and class members had to work through all or part of their meal periods, had their
26 meal periods interrupted, and/or had to wait extended periods of time before taking meal
27 periods. For example, on at least two (2) instances, Plaintiff missed his meal periods due to
28 the heavy workload and lack of coverage. Additionally, as stated, on at least five (5)

1 occasions, Plaintiff's meal periods were interrupted because he was required to attend to walk-
2 in customers during his meal periods. Further, Plaintiff sometimes took his meal periods late,
3 after the fifth hour of work, for the same reasons. Thus, Defendants failed to provide Plaintiff
4 and class members with compliant, 30-minute meal periods.

5 80. Second, as stated, because Defendants frowned upon employees accruing meal
6 period penalties, Defendants' management pressured employees to clock out for meal periods
7 to reflect compliant meal periods, even when they had not received compliant meal periods.
8 Plaintiff and class members did not sign valid meal period waivers on days that they were
9 entitled to meal periods and were not relieved of all duties.

10 81. Moreover, Defendants had a company-wide policy of requiring all newly hired
11 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
12 the position that non-exempt, hourly paid employees had waived their rights to first and/or
13 second meal periods for the entirety of their employment and, on that basis, did not provide
14 them with all meal periods to which they were entitled. Further, Defendants' "Meal Break
15 Waiver Agreement" form requires employees to provide written notice should they wish to
16 revoke the waiver. Defendants' presumption that meal periods would not be provided for
17 shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten
18 (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or
19 near the time of hire, and imposition on employees to revoke the waivers in writing,
20 discouraged and impeded Plaintiff and class members from taking all meal periods to which
21 they were entitled.

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

26 [A]fter the meal break obligation is triggered . . . an employer is put to a
27 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
28 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
written agreement to an on-duty meal period if circumstances permit.

1 Failure to do one of these will render the employer liable for premium pay.

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

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

13 84. Furthermore, Defendants engaged in a company-wide practice and/or policy of
14 not paying all meal period premiums owed when compliant meal periods were not provided.
15 Because of this practice and/or policy, Plaintiff and class members have not received premium
16 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
17 Plaintiff and class members compliant meal periods in violation of California Labor Code
18 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

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

23 **FOURTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 25 **(Against all Defendants)**

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

28 87. At all relevant times herein set forth, the applicable IWC Wage Order and

1 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
2 members' employment by Defendants.

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

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

20 90. During the relevant time period, Defendants regularly failed to authorize and
21 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
22 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
23 use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy
24 workloads resulted in a lack of rest period coverage and prevented Plaintiff and class members
25 from being relieved of all duty in order to take compliant rest periods. Defendants also failed
26 to adhere to a schedule for rest periods, further led to Plaintiff and class members not being
27 authorized and permitted to take rest periods.

28 91. Furthermore, on information and belief, Defendants maintained a company-

1 wide on-premises rest period policy, which effectively required that Plaintiff and class
2 members remain on Defendants' premises during their rest periods. Because Plaintiff and
3 class members were restricted from leaving the premises during rest periods, they were denied
4 the ability to use their rest periods freely for their own purposes, such as running personal
5 errands. Thus, Defendants effectively maintained control over Plaintiff and class members
6 during rest periods.

7 92. As a result of Defendants' practices and policies, Plaintiff and class members
8 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
9 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
10 at least once per week, Plaintiff had to forgo his rest periods because the restaurant was busy
11 and did not have coverage. When Plaintiff was able to take his rest periods, they were cut
12 short because he was required to attend to customers.

13 93. Defendants have also engaged in a systematic, company-wide practice and/or
14 policy of not paying rest period premiums owed when rest periods are not authorized and
15 permitted. Because of this practice and/or policy, Plaintiff and class members have not
16 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
17 class members rest periods and failed to pay them rest period premiums due, in violation of
18 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

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

24 **FIFTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 26 **Statements and Failure to Maintain Accurate Payroll Records** 27 **(Against all Defendants)**

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

1 and every allegation set forth above.

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

7 97. At all relevant times, Defendants have knowingly and intentionally provided
8 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
9 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
10 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
11 applicable hourly rates in effect during the pay period, including rates of pay for overtime
12 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
13 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

14 98. Because Defendants did not accurately record the time Plaintiff and Subclass
15 members spent working off-the-clock, Defendants did not list the correct amount of gross
16 wages and net wages earned by Plaintiff and Subclass members in compliance with sections
17 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
18 number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2),
19 and failed to list the applicable hourly rates of pay in effect during the pay period and
20 corresponding accurate number of work hours worked at each hourly rate in violation of
21 section 226(a)(9).

22 99. The wage statement deficiencies also include, without limitation, failing to list
23 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
24 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
25 for which employees were paid; failing to list the name of the employee and only the last four
26 digits of his or her social security number or an employee identification number other than a
27 social security number; failing to list the name and address of the legal entity that is the
28 employer; and/or failing to state all hours worked as a result of not recording or stating hours

1 worked off-the-clock.

2 100. California Labor Code section 1174(d) provides that “[e]very person employing
3 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
4 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
5 plants or establishments at which employees are employed, payroll records showing the hours
6 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
7 applicable piece rate paid to, employees employed at the respective plants or
8 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
9 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
10 members showing the daily hours they worked and the wages paid thereto as a result of failing
11 to record the off-the-clock hours that they worked.

12 101. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
14 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
15 employment of any employees for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
17 Wage Order, employers are required to keep accurate time records showing when the
18 employee begins and ends each work period. During the relevant time period, Defendants
19 engaged in company-wide practices and/or policies of failing to record actual hours worked,
20 and thereby failed to keep accurate records of work period and meal period start and end times
21 for Plaintiff and Subclass members, in violation of section 1198.

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

26 //

27 //

28 //

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

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

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

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

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

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

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

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

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

110. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

112. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

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

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

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

115. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

116. During the relevant time period, Defendants, on a company-wide basis, required Plaintiff and class members to report to work in clean and presentable uniforms bearing Defendants' The Kebab Shop company logo and name, including uniform shirts and hats. However, Defendants did not provide Plaintiff and class members with sufficient uniforms to wear in relation to the tasks they were required to perform and the number of shifts they worked throughout the week. For example, Defendants only provided Plaintiff with three (3) uniform shirts and one (1) uniform hat at the time of hire. Because Defendants failed to provide Plaintiff with an adequate number of uniform items, Plaintiff and class members had to wash their uniforms more frequently than they otherwise would do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Plaintiff's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a

1 result, he had to wash his uniform items separately from his regular clothing, and would spend
2 approximately \$15 per week at the laundromat for the upkeep of his uniforms. Thus,
3 Defendants failed to maintain the uniforms they required Plaintiff and class members to wear
4 during their shifts and forced them to incur the cost of maintaining employee uniforms.

5 117. Defendants could have provided Plaintiff and class members with an adequate
6 number of uniform items or access to laundering services; or Defendants could have
7 reimbursed employees for the costs of their laundering expenses or provided a uniform
8 maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff
9 and class members.

10 118. Defendants' company-wide policy and/or practice of not reimbursing
11 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
12 and class members violates California Labor Code section 2802. Defendants have
13 intentionally and willfully failed to reimburse Plaintiff and class members for necessary
14 business-related expenses and costs.

15 119. Plaintiff and class members are entitled to recover from Defendants their
16 business-related expenses incurred during the course and scope of their employment, plus
17 interest.

18 **NINTH CAUSE OF ACTION**

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

20 **(Against all Defendants)**

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

23 121. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
24 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
25 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
26 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
27 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
28 those Labor Code sections not found in section 2699.5, including sections 246, 516, 1182.12,

1 and 2810.5.

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

- 4 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
5 Wage Order for Defendants' failure to compensate Plaintiff and other
6 aggrieved employees with all required overtime pay, as alleged herein;
- 7 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to include all forms
9 of remuneration in the regular rate of pay as required by law for
10 purposes of paying overtime wages and/or meal and rest period
11 premiums to other aggrieved employees, as set forth below;
- 12 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
13 1198, and the applicable IWC Wage Order for Defendants' failure to
14 compensate Plaintiff and other aggrieved employees with at least
15 minimum wages for all hours worked, as alleged herein;
- 16 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
17 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
18 and other aggrieved employees with meal periods, as alleged herein and
19 as set forth below;
- 20 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
21 applicable IWC Wage Order for Defendants' failure to authorize and
22 permit Plaintiff and other aggrieved employees to take rest periods, as
23 alleged herein and set forth below;
- 24 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
25 IWC Wage Order for failure to provide accurate and complete wage
26 statements to Plaintiff and other aggrieved employees, as alleged herein
27 and set forth below;
- 28 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable

IWC Wage Order for failure to maintain payroll records, as alleged herein;

- (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (i) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (j) Violation of Labor Code section 246 for failure to properly calculate the sick leave paid to other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (l) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below.

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

124. Defendants' failure to properly calculate the rates of pay for overtime wages based on all remuneration paid is in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order. Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

1 125. As stated, during the relevant time period, Defendants engaged in a company-
2 wide practice and/or policy of not paying all meal period premiums owed when compliant
3 meal periods are not provided. Because of this practice and/or policy, Plaintiff and other
4 aggrieved employees have not received premium pay for missed, late, and interrupted meal
5 periods. Alternatively, to the extent that Defendants did pay other aggrieved employees for
6 missed, late, and interrupted meal periods, Defendants did not pay other aggrieved employees
7 at the correct rate of pay for premiums because Defendants systematically failed to include all
8 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
9 of remuneration, in the regular rate of pay.

10 126. Defendants' failure to properly calculate the rates of pay for meal period
11 premiums based on all remuneration paid is in violation of California Labor Code sections
12 226.7 and 1198, and the applicable IWC Wage Order. Other aggrieved employees are
13 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
14 2699(a), (f), and (g).

15 127. As stated, during the relevant time period, Defendants have engaged in a
16 company-wide practice and/or policy of not paying all rest period premiums owed when
17 compliant rest periods are not authorized or permitted. Because of this practice and/or policy,
18 Plaintiff and other aggrieved employees have not received premium pay for all missed rest
19 periods. Alternatively, to the extent that Defendants did pay other aggrieved employees one
20 (1) additional hour of premium pay for missed rest periods, Defendants did not pay other
21 aggrieved employees at the correct rate of pay for premiums because Defendants failed to
22 include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or
23 other forms of remuneration, in the regular rate of pay.

24 128. Defendants' failure to properly calculate the rates of pay for rest period
25 premiums based on all remuneration paid is in violation of California Labor Code sections
26 226.7 and 1198, and the applicable IWC Wage Order. Other aggrieved employees are
27 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
28 2699(a), (f), and (g).

1 129. During the relevant time period, because Defendants did not calculate other
2 aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages,
3 meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct
4 amount of gross wages earned by other aggrieved employees in compliance with section
5 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved
6 employees in violation of section 226(a)(5). Defendants also failed to correctly list all
7 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
8 overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section
9 226(a)(9).

10 130. Defendants' conduct is in violation of California Labor Code section 226(a)
11 and 1198. Other aggrieved employees are therefore entitled to recover civil penalties pursuant
12 to Labor Code sections 226.3 and/or 2699(a), (f), and (g).

13 131. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
14 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
15 days from the commencement of employment with paid sick days, to be accrued at least one
16 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
17 employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time
18 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
19 the workweek in which the employee uses paid sick time, whether or not the employee
20 actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
21 employees shall be calculated by dividing the employee's total wages, not including overtime
22 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
23 days of employment."

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

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

7 133. Defendants' failure to properly calculate the sick leave rates of pay based on all
8 remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved
9 employees on a company-wide basis, in violation of Labor Code section 246(l). Other
10 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
11 sections 248.5 and/or 2699(a), (f), and (g).

12 134. At all relevant times herein, California's Wage Theft Prevention Act was
13 enacted to ensure that employers provide employees with basic information material to their
14 employment relationship at the time of hiring, and to ensure that employees are given written
15 and timely notice of any changes to basic information material to their employment. Codified
16 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
17 time of hiring, an employer must provide written notice to employees containing basic and
18 material payroll information, including, among other things, the rate(s) of pay and basis
19 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
20 including any rates for overtime, the regular payday designated by the employer, and any
21 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
22 Code § 2810.5(a)(1)(A)-(C).

23 135. At all relevant times, on information and belief, Defendants failed, on a
24 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
25 lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
26 Specifically, Defendants failed to provide Plaintiff and other aggrieved employees with the
27 hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section
28 2810.5(a)(1)(A) and the regular payday designated by the employer, in violation of section

1 2810.5(a)(1)(C). Instead, the wage theft form that Defendants provided to Plaintiff other
2 aggrieved employees is blank where the aforementioned wage information should be filled in.

3 136. Defendants' failure to provide Plaintiff and other aggrieved employees with
4 written notice of basic information regarding their employment with Defendants is in violation
5 of California Labor Code section 2810.5. Plaintiff and other aggrieved employees are
6 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
7 (g).

8 **TENTH CAUSE OF ACTION**

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

10 **Unlawful Business Practices**

11 **(Against all Defendants)**

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

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

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

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

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

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

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

4 (b) Failing to pay at least minimum wage to Plaintiff and class members in
5 violation of California Labor Code sections 1182.12, 1194, 1197,
6 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
7 herein;

8 (c) Failing to provide all meal periods to Plaintiff and class members in
9 violation of California Labor Code sections 226.7, 512(a), 516, and
10 1198, and the applicable IWC Wage Order, as alleged herein;

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

14 (e) Failing to provide Plaintiff and class members with accurate wage
15 statements and failing to maintain accurate payroll records in violation
16 of California Labor Code sections 226(a), 1174(d), and 1198, and the
17 applicable IWC Wage Order, as alleged herein;

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

20 (g) Failing to reimburse Plaintiff and class members for all business
21 expenses necessarily incurred in violation of California Labor Code
22 section 2802, as alleged herein; and

23 (h) Failing to provide written notice of information material to Plaintiff's
24 and class members' employment with Defendants in violation of
25 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

26 142. At all relevant times herein, California's Wage Theft Prevention Act was
27 enacted to ensure that employers provide employees with basic information material to their
28 employment relationship at the time of hiring, and to ensure that employees are given written

1 and timely notice of any changes to basic information material to their employment. Codified
2 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
3 time of hiring, an employer must provide written notice to employees containing basic and
4 material payroll information, including, among other things, the rate(s) of pay and basis
5 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
6 including any rates for overtime, the regular payday designated by the employer, and any
7 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
8 Code § 2810.5(a)(1)(A)-(C).

9 143. At all relevant times, on information and belief, Defendants failed, on a
10 company-wide basis, to provide written notice to Plaintiff and class members that lists all of
11 the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically,
12 Defendants failed to provide Plaintiff and class members with the hourly rate(s) of pay,
13 including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A) and the regular
14 payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage
15 theft form that Defendants provided to Plaintiff and class members is blank where the
16 aforementioned wage information should be filled in. Defendants' failure to provide Plaintiff
17 and class members with written notice of basic information regarding their employment with
18 Defendants is in violation of California Labor Code section 2810.5.

19 144. As a result of the violations of California law herein described, Defendants
20 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
21 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
22 herein.

23 145. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
24 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
25 Defendants during a period that commences four years prior to the filing of the initial
26 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
27 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
28 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

1 **ELEVENTH CAUSE OF ACTION**

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

3 **Unfair Business Practices**

4 **(Against all Defendants)**

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

7 147. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 148. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
12 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
13 seeks to enforce important rights affecting the public interest within the meaning of Code of
14 Civil Procedure section 1021.5.

15 149. Defendants’ activities, namely Defendants’ company-wide practice and/or
16 policy of not paying Plaintiff and class members all meal and rest period premiums due to
17 them under Labor Code section 226.7, deprived Plaintiff and class members of the
18 compensation guarantee and enhanced enforcement implemented by section 226.7. The
19 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
20 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
21 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
22 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
23 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
24 unfair business practice in violation of California Business & Professions Code sections
25 17200, *et seq.* (*Id.*)

26 150. A violation of California Business & Professions Code sections 17200, *et seq.*
27 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
28 and practices have violated the spirit of California’s meal and rest period laws and constitute

1 acts against the public policy behind these laws.

2 151. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
3 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
4 benefits implemented by section 226.7 withheld and retained by Defendants during a period
5 that commences four years prior to the filing of the initial complaint; a permanent injunction
6 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
7 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
8 Procedure section 1021.5 and other applicable laws; and an award of costs.

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

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

17 **Class Certification**

- 18 2. That this case be certified as a class action;
19 3. That Plaintiff be appointed as the representative of the Class and Subclass;
20 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

As to the Second Cause of Action

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

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

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

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

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

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

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and class members;

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

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

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

20. For pre-judgment interest on any unpaid meal period premiums from the date

such amounts were due, or as otherwise provided by law;

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

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

As to the Fourth Cause of Action

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

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

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

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

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

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

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

As to the Fifth Cause of Action

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

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

- 1 32. For injunctive relief pursuant to California Labor Code section 226(h);
2 33. For statutory penalties pursuant to California Labor Code section 226(e);
3 34. For attorneys' fees and costs pursuant to California Labor Code section
4 226(e)(1); and
5 35. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Sixth Cause of Action**

- 8 36. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
10 and/or meal and rest period premiums owed at the time of termination of the employment of
11 Plaintiff and other terminated class members;
12 37. For all actual, consequential and incidental losses and damages, according to
13 proof;
14 38. For waiting time penalties according to proof pursuant to California Labor
15 Code section 203 for all employees who have left Defendants' employ;
16 39. For pre-judgment interest on any unpaid wages from the date such amounts
17 were due, or as otherwise provided by law;
18 40. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and
20 41. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

- 23 42. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
25 overtime wages, minimum wages, and/or meal and rest period premiums during their
26 employment;
27 43. For all actual, consequential and incidental losses and damages, according to
28 proof;

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

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

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

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

As to the Eighth Cause of Action

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

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

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

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

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

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

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 512(a), 516, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and

1 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
2 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
3 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
4 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
5 earned wages upon termination); 204 (by failing to timely pay all earned wages during
6 employment); 246 (by failing to properly calculate sick leave pay); 2802 (by failing to
7 reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of
8 employment;

9 55. For civil penalties pursuant to the California Labor Code sections 210, 226.3,
10 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
11 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
12 1198, 2802, and 2810.5;

13 56. For attorneys' fees and costs pursuant to California Labor Code section
14 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
15 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12,
16 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

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

20 **As to the Tenth Cause of Action**

21 59. That the Court declare, adjudge and decree that Defendants' conduct of failing
22 to provide Plaintiff and class members all overtime wages due to them, failing to provide
23 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
24 class members all meal periods, failing to authorize and permit Plaintiff and class members to
25 take all rest periods, failing to provide Plaintiff and class members accurate and complete
26 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
27 failing to timely pay Plaintiff and class members all earned wages during employment, failing
28 to reimburse Plaintiff and class members for business-related expenses, and failing to provide

1 written notice of material terms of employment, constitutes an unlawful business practice in
2 violation of California Business and Professions Code sections 17200, *et seq.*;

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

5 61. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections
8 17200, *et seq.*;

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

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

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

15 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
16 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
17 an unfair business practice in violation of California Business and Professions Code sections
18 17200, *et seq.*;

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

22 66. For the appointment of a receiver to receive, manage and distribute any and all
23 funds disgorged from Defendants and determined to have been wrongfully acquired by
24 Defendants as a result of violations of California Business & Professions Code sections
25 17200, *et seq.*;

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

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

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

3

4 Dated: August 5, 2024

Respectfully submitted,

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Capstone Law APC

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By: Roxanna Tabatabaeepour

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Roxanna Tabatabaeepour

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Ryan Tish

Alexander Wallin

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Attorneys for Plaintiff Bryan Zamorano

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EXHIBIT “1”



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May 31, 2024

VIA ONLINE SUBMISSION

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

Subject: *Bryan Zamorano v. TKS Restaurants, LLC, et al.*

Dear PAGA Administrator:

This office represents Bryan Zamorano in connection with his claims under the California Labor Code. Mr. Zamorano was an employee of TKS RESTURANTS, LLC and/or TKS RESTAURANTS, INC. For the purpose of this letter, Mr. Zamorano collectively refers to these entities as "THE KEBAB SHOP."

The employers may be contacted directly at the addresses below:

TKS RESTAURANTS, LLC
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738

TKS RESTAURANTS, INC.
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738

Mr. Zamorano intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Zamorano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by THE KEBAB SHOP as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

THE KEBAB SHOP employed Mr. Zamorano as an hourly paid, non-exempt Line Cook from approximately June 2023 to November 2023. Mr. Zamorano worked for THE KEBAB SHOP at its restaurant located at 14431 Culver Drive, Irvine, California. During his employment, Mr. Zamorano typically worked five (5) to eight (8) or more hours per day and two (2) to five (5) days per week. At the time his employment ended, Mr. Zamorano was compensated approximately \$18.00 per hour. His primary job duties included, without limitation, preparing food, taking orders, dishwashing, cleaning restrooms, and cashiering.

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

THE KEBAB SHOP’s Company-Wide and Uniform Payroll and HR Practices

TKS RESTAURANTS, LLC is a California limited liability company; and TKS RESTAURANTS, INC. is a California corporation. Together, they operate a fast-casual Mediterranean restaurant chain, with at least 31 restaurants in California. Upon information and belief, THE KEBAB SHOP maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Austin, Texas, for all non-exempt, hourly paid employees working for THE KEBAB SHOP in California, including Mr. Zamorano and other aggrieved employees. At all relevant times, THE KEBAB SHOP issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Zamorano and other aggrieved employees, regardless of their location or position.

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

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

THE KEBAB SHOP willfully failed to pay all overtime wages owed to Mr. Zamorano and other aggrieved employees. During the relevant time period, Mr. Zamorano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

¹ These facts, theories, and claims are based on Mr. Zamorano’s experience and counsel’s review of those records currently available relating to Mr. Zamorano’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Zamorano reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, THE KEBAB SHOP had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Zamorano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. THE KEBAB SHOP's "Time-Keeping System" policy states, in part, "[o]vertime work must always be approved before it is performed." Further, as also stated in THE KEBAB SHOP's Time-Keeping System policy, [n]onexempt employees should clock-in no more than 5 minutes prior to their scheduled starting time nor stay more than 5 minutes after their scheduled stop time without expressed, prior authorization from their supervisor." THE KEBAB SHOP's timekeeping policies led Mr. Zamorano and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, at least twice per week, Mr. Zamorano was required to perform restaurant closing duties after clocking out at his scheduled shift end time, including sweeping, mopping, turning off the lights, and setting the restaurant's alarm, which could take about 10 minutes. As further examples, Mr. Zamorano and other aggrieved employees were required to answer work-related phone calls and text messages from THE KEBAB SHOP's supervisors and also spend time reviewing and approving their timecards outside of their scheduled shifts or on their days off. For instance, Mr. Zamorano would often receive calls and text messages on his days off from his supervisor reminding him to review and approve his timecard for the week and was often required to spend time reviewing and approving his timesheets on his mobile phone before clocking in for his shift. However, Mr. Zamorano was not allowed to record this time spent working. Additionally, on information and belief, THE KEBAB SHOP's management would alter and/or falsify time records to shave off time Mr. Zamorano spent working in order to limit overtime accrual.

Second, upon information and belief, THE KEBAB SHOP had, and continues to have, a company-wide policy of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. THE KEBAB SHOP's uniform use of labor budgeting and understaffing resulted in a failure to provide Mr. Zamorano and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers, which included preparing walk-in orders, food delivery application orders, and large catering orders. Because THE KEBAB SHOP did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Mr. Zamorano and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, THE KEBAB SHOP had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Zamorano and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Zamorano worked through some of his meal periods due to lack of coverage and to keep up with the demands of work. Additionally, on at least five (5) instances, Mr. Zamorano's meal periods were interrupted because he was required to attend to walk-in customers during his meal periods, for the same reasons mentioned above.

Third, on information and belief, because THE KEBAB SHOP frowned upon employees accruing meal period penalties, THE KEBAB SHOP's management pressured Mr. Zamorano and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, even when they had not received compliant meal periods. Thus, THE KEBAB SHOP did not record all hours

worked during meal periods, and Mr. Zamorano and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

THE KEBAB SHOP's failure to pay Mr. Zamorano and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Zamorano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

First, as set forth above, as a result of THE KEBAB SHOP's policy of limiting the amount of overtime employees could accrue, THE KEBAB SHOP required Mr. Zamorano and other aggrieved employees to perform work off-the-clock. As stated, THE KEBAB SHOP required Mr. Zamorano and other aggrieved employees to perform work outside of their scheduled shift start and end times and on days off, including completing store closing duties, answering phone calls and text messages from THE KEBAB SHOP's supervisors, and spending time reviewing and approving their timecards. Additionally, on information and belief, THE KEBAB SHOP's management would alter and/or falsify time records to shave off time Mr. Zamorano spent working in order to limit overtime accrual. As a result, THE KEBAB SHOP failed to track this time that Mr. Zamorano and other aggrieved employees spent working off-the-clock, and thus, Mr. Zamorano and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to THE KEBAB SHOP's company-wide policies and/or practices of utilizing labor budgets, understaffing its locations, assigning heavy workloads, and failing to adhere to a schedule for meal periods, Mr. Zamorano and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Further, to limit the meal penalties that THE KEBAB SHOP would otherwise owe, THE KEBAB SHOP pressured Mr. Zamorano and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Accordingly, THE KEBAB SHOP regularly failed to pay at least minimum wages to Mr. Zamorano and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Zamorano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated above, THE KEBAB SHOP had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, including preparing walk-in orders, food delivery application orders, and large catering orders, has resulted in a lack of meal period coverage and prevented Mr. Zamorano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, THE KEBAB SHOP also failed to adhere to a schedule for meal periods, which further caused Mr. Zamorano and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Zamorano and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, on at least two (2) instances, Mr. Zamorano missed his meal periods due to the heavy workload and lack of coverage. Additionally, as stated, on at least five (5) occasions, Mr. Zamorano's meal periods were interrupted because he was required to attend to walk-in customers during his meal periods. Further, Mr. Zamorano sometimes took his meal periods late, after the fifth

hour of work, for the same reasons. Thus, THE KEBAB SHOP failed to provide Mr. Zamorano and other aggrieved employees with compliant, 30-minute meal periods.

Second, as stated, because THE KEBAB SHOP frowned upon employees accruing meal period penalties, THE KEBAB SHOP's management pressured employees to clock out for meal periods to reflect compliant meal periods, even when they had not received a compliant meal periods.

Third, THE KEBAB SHOP did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. Mr. Zamorano and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

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

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

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

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

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

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

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

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

During the relevant time period, THE KEBAB SHOP regularly failed to authorize and permit Mr. Zamorano and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, THE KEBAB SHOP's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Mr. Zamorano and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. THE KEBAB SHOP also failed to adhere to a schedule for rest periods, which further led to Mr. Zamorano and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, during the relevant time period, THE KEBAB SHOP maintained a company-wide on-premises rest period policy, which effectively required that Mr. Zamorano and other aggrieved employees remain on THE KEBAB SHOP's premises during their rest periods. Because Mr. Zamorano and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own

purposes, such as running personal errands. Thus, THE KEBAB SHOP effectively maintained control over Mr. Zamorano and other aggrieved employees during rest periods.

As a result of THE KEBAB SHOP's practices and policies, Mr. Zamorano and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, at least once per week, Mr. Zamorano had to forgo his rest periods because the restaurant was busy and did not have coverage. When Mr. Zamorano was able to take his rest periods, they were short because he was required to attend to customers.

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

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

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

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. THE KEBAB SHOP has not provided Mr. Zamorano and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, THE KEBAB SHOP has knowingly and intentionally provided Mr. Zamorano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, THE KEBAB SHOP issued uniform wage statements to Mr. Zamorano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, THE KEBAB SHOP violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because THE KEBAB SHOP did not record the time Mr. Zamorano and other aggrieved employees

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

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, THE KEBAB SHOP engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Zamorano and other aggrieved employees, in violation of section 1198. Furthermore, in light of THE KEBAB SHOP's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, THE KEBAB SHOP kept no records of meal start and end times for second meal periods.

Mr. Zamorano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

Mr. Zamorano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

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

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

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

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked.

Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

THE KEBAB SHOP's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

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

California Code of Regulations, Title 8, section 11050(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

THE KEBAB SHOP willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because THE KEBAB SHOP, on information and belief, failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, other aggrieved employees would be scheduled to work a 4-hour to 8-hour shift, clock out for at least

an hour, and then return to work later in the day for an additional shift. When this occurred, THE KEBAB SHOP did not pay other aggrieved employees an additional hour at minimum wage.

THE KEBAB SHOP's failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, THE KEBAB SHOP, on a company-wide basis, required Mr. Zamorano and other aggrieved employees to wear uniforms bearing its TKS company logo and name, including uniform shirts and hats. However, THE KEBAB SHOP did not provide its employees with sufficient uniforms to wear in relation to the tasks they were required to perform and the number of shifts they worked throughout the week. For example, THE KEBAB SHOP only provided Mr. Zamorano with three (3) uniform shirts and one (1) uniform hat at the time of hire. Because THE KEBAB SHOP failed to provide Mr. Zamorano and other aggrieved employees with an adequate number of uniform items, Mr. Zamorano and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to the nature of restaurant work, Mr. Zamorano's uniform items would become stained with grease, sweaty, soiled, and/or acquire an unpleasant odor such that he was unable to mix these clothes in with other laundry. As a result, Mr. Zamorano had to wash his uniform items separately from his regular clothing, and would spend approximately \$15 per week for the upkeep of his uniforms. Thus, THE KEBAB SHOP failed to maintain uniforms it required Mr. Zamorano and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

THE KEBAB SHOP could have provided Mr. Zamorano and other aggrieved employees with an adequate number of uniforms items or access to laundering services; or THE KEBAB SHOP could have reimbursed employees for the costs of their laundering expenses or provided a uniform maintenance allowance. Instead, THE KEBAB SHOP passed these operating costs off onto Mr. Zamorano and other aggrieved employees.

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

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

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

THE KEBAB SHOP failed to provide Mr. Zamorano and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, THE KEBAB SHOP failed to provide Mr. Zamorano and other aggrieved employees with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section 2810.5(a)(1)(A) and the regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that THE KEBAB SHOP provided to Mr. Zamorano is blank where the aforementioned wage information should be filled in. THE KEBAB SHOP's failure to provide Mr. Zamorano and other aggrieved employees with written notice of basic information regarding their employment with THE KEBAB SHOP is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

THE KEBAB SHOP, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Zamorano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Zamorano seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Zamorano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against THE

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

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', with a stylized flourish extending to the right.

Alexander Lima

Copy: TKS RESTAURANTS, LLC (via U.S. Certified Mail); TKS RESTAURANTS, INC. (via U.S. Certified Mail)

CERTIFIED MAIL

[illegible]

SENDER: COMPLETE THIS SECTION

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

TKS RESTAURANTS, LLC
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738

COMPLETE THIS SECTION ON DELIVERY

C. Date of Delivery

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

7 Mail Restricted Delivery

Restricted Delivery

DL000707-71215-213315040013

7022 2420 0000 2264 9687

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

Domestic Return Receipt

Domestic Mail Only

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

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (electronic)

5

Posttest

12

TKS RESTAURANTS, LLC
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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



7022 2410 0000 2264 9698

TKS RESTAURANTS, INC.
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738

SENDER: COMPLETE THIS SECTION

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

TKS RESTAURANTS, INC.
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738



COMPLETE THIS SECTION ON DELIVERY

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

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

- Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Delivery Restricted Delivery
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

7022 2410 0000 2264 9698

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

Domestic Return Receipt

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

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

OFFICIAL USE

Certified Mail Fee

2 Amounts

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

Postmark

TKS RESTAURANTS, INC.
12600 HILL COUNTRY BLVD, R-275
AUSTIN, TX 78738

7022 2410 0000 2264 9698

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

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		B. Received by (Printed Name)	C. Date of Delivery																
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PROOF OF SERVICE

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

On **August 5, 2024**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

BUCHALTER A Professional Corporation TRACY A. WARREN (SBN: 228013) ALICIA A. BELOCK (SBN: 306558) 655 West Broadway, Suite 1600 San Diego, CA 92101 Telephone: 619.219.5335 Email: twarren@buchalter.com abelock@buchalter.com	<i>Attorneys for Defendant(s)</i> TKS RESTAURANTS, LLC, and TKS RESTAURANTS, INC.
BUCHALTER A Professional Corporation ALISSA PLEAU-FULLER (SBN: 258907) 500 Capitol Mall, Suite 1900 Sacramento, CA 95814 Phone: (916) 945-5187 Email: apleaufuller@buchalter.com dpowers@buchalter.com	

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **August 5, 2024**, at Los Angeles, California.

Sam Orquia
Type/Print Name

/s/ Sam Orquia
Signature