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7 Attorneys for Plaintiff(s),

8 ANIKA MARQUEZ, and all others similarly situated

9 (Additional attorneys for Plaintiff(s) on next page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN DIEGO**

12 **(UNLIMITED JURISDICTION)**

13 ANIKA MARQUEZ, on behalf of herself and all
14 others similarly situated, the general public, and
15 as an “aggrieved employee” on behalf of other
16 “aggrieved employees” and the State of
California under the Labor Code Private
Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 TEAM LOS PANCHOS, INC, a California
20 corporation; LUIS DIAZ, a natural person; and
21 DOES 1–50, inclusive,

22 *Defendant(s).*

ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By I. Irizarry

, Deputy Clerk

Case No.

37-2024-00020731-CU-OE-CTL

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 221, 510, 558.1, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1, and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7, 558.1, and 1198);
4. Failure to Provide Storage Facilities and Suitable Resting Facilities (Lab. Code § 1198);
5. Failure to Indemnify (Lab. Code §§ 558.1, 1198, and 2802);
6. Wage Statement Penalties (Lab. Code §§ 226 and 558.1);
7. Waiting Time Penalties (Lab. Code §§ 201, 202, 203, and 558.1);
8. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Civil Penalties (Lab. Code §§ 2698, *et*



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seq.)

JURY TRIAL DEMANDED

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1 Plaintiff, Anika Marquez (hereafter “Plaintiff” or “Marquez”), on behalf of herself and all
2 others similarly situated, the general public, and as an “aggrieved employee” on behalf of other
3 “aggrieved employees” and the State of California under the Labor Code Private Attorneys
4 General Act of 2004, complains and alleges as follows:

5 **I. INTRODUCTION**

6 1. Plaintiff brings this class and representative action for alleged violations of the
7 California Labor Code, Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage
8 Order”), and the California Business and Professions Code against Defendants Team Los
9 Panchos, Inc, a California corporation, Luis Diaz, a natural person, and Does 1 through 50,
10 inclusive (collectively “Defendants”).

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
12 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
13 relief. These claims are based on Defendants’ failures to:

14 (A) Pay all wages, including minimum, regular, and overtime wages earned for
15 all hours worked at the correct rates of pay;

16 (B) Provide all meal periods;

17 (C) Authorize and permit all rest breaks;

18 (D) Pay premium wages for unprovided meal periods;

19 (E) Pay premium wages for unprovided rest breaks;

20 (F) Provide storage facilities and suitable resting facilities;

21 (G) Indemnify for necessary work-related expenditures;

22 (H) Only deduct wages lawfully;

23 (I) Issue only accurate and complete itemized wage statements;

24 (J) Timely pay wages upon termination of employment;

25 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages,
26 restitution, statutory and civil penalties, attorneys’ fees, costs, and related relief through this class
27 action.

28 **II. THE PARTIES**

3. Plaintiff Anika Marquez is a resident of California. At all relevant times, Plaintiff
was an “employee” within the meaning of Title 8 California Code of Regulations § 11050 and an



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1 “aggrieved employee” within the meaning of Labor Code § 2699 (c).

2 4. Defendant Team Los Panchos, Inc is a corporation organized and existing under
3 the laws of California and also a citizen of California based on Plaintiff’s information and belief.

4 5. Defendant Luis Diaz is a natural person and also a citizen of California based on
5 Plaintiff’s information and belief.

6 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
7 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
8 is informed and believes and thereon alleges that said Defendants are legally responsible for the
9 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
10 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
11 when ascertained.

12 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
13 herein, all Defendants were the agents, employees, and/or servants, masters or employers of the
14 remaining Defendants, and in doing the things hereinafter alleged, were acting or failing to act
15 within the course and scope of such agency, employment, direction, and control, and with the
16 approval and ratification of each of the other Defendants.

17 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
19 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
20 Members or otherwise complying with their rights in accordance with applicable California labor
21 laws as alleged herein.

22 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
23 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
24 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
25 described class in accordance with applicable laws as alleged herein.

26 **III. CLASS ALLEGATIONS**

27 10. This action has been brought and may be maintained as a class action pursuant to
28 California Code of Civil Procedure section 382 because there is a well-defined community of
interest among the persons who comprise the readily ascertainable class defined below and
because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
a class action.



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1 11. **Class Definition:** The Class is defined as follows: All persons Defendants
2 employed in California as hourly, non-exempt employees, including “back-of-house” and “front-
3 of-house” employees including, but not limited to cashiers, servers, server assistants, bussers,
4 food runners, and line cooks, individuals performing work comparable to the aforementioned,
5 compensated comparably to the aforementioned, and individuals in similar positions, at any time
6 during the period beginning four years prior to the filing of this action and ending on the date that
7 final judgment is entered in this action (“Class” or “Class Members”).

8 12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
9 right to amend or modify the class definition with greater specificity, by further division into
10 subclasses and/or by limitation to particular issues.

11 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
12 each individual Class Member is impractical. While Plaintiff does not currently know the exact
13 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
14 minimum required for numerosity under California laws.

15 14. **Commonality and Predominance:** Common questions of law and fact exist as to
16 all Class Members and predominate over any questions which affect only individual Class
17 Members. These questions include, but are not limited to:

18 A. Whether Defendants failed to pay all wages earned to Class Members for
19 all hours worked at the correct rates of pay, including minimum, regular, overtime, meal period
20 premium, and rest period premium wages;

21 B. Whether Defendants unlawfully deducted wages from Class Members;

22 C. Whether Defendants failed to provide the Class Members with all meal
23 periods in compliance with California law;

24 D. Whether Defendants failed to authorize and permit the Class Members to
25 take all rest periods in compliance with California law;

26 E. Whether Defendants failed to indemnify the Class Members for the
27 reasonable expenses they incurred during the course of performing their duties;

28 F. Whether Defendants knowingly and intentionally failed to provide the
class with accurate and complete itemized wage statements;

 G. Whether Defendants willfully failed to provide the class with timely final
wages;



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1 H. Whether Defendants engaged in unfair competition within the meaning of
2 Business and Professions Code sections 17200, *et seq.*, with respect to the Class; and

3 I. Whether Class Members are entitled to restitution of money or property
4 that Defendants may have acquired from them through alleged Labor Code violations.

5 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
6 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
7 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
8 Code, the Wage Order, and the Business and Professions Code.

9 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
10 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
11 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
12 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
13 Members.

14 17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
15 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
16 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
17 Plaintiff and absent Class Members.

18 18. **Superiority:** A class action is vastly superior to other available means for fair and
19 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
20 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
21 and efficiently prosecute their common claims in a single forum without the unnecessary
22 duplication of effort and expense that numerous individual actions would entail. In addition, the
23 monetary amounts due to many individual Class Members are likely to be relatively small and
24 would thus make it difficult, if not impossible, for individual Class Members to both seek and
25 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
26 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
27 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

28 **IV. STATEMENT OF FACTS**

19. The Wage Order applies to "all persons employed in the public housekeeping
industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The
Wage Order defines "Public Housekeeping Industry" to mean



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any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Marquez, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Marquez, and all of the Class Members, worked for one or more restaurants. Accordingly, Marquez and all of the other Class Members are entitled to the protections the Wage Order provides.

20. On approximately June 29, 2023, the Defendants began to employ Marquez in San Diego in the position of hourly, non-exempt server. The Defendants continuously employed her in that capacity until on or about July 19, 2023, when her employment ended.

21. At all relevant times, the Defendants issued wages to Marquez and all of the other Class Members on a weekly basis and paid them by the hour. At all relevant times, the Defendants



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1 classified Marquez and all of the other Class Members as non-exempt employees entitled to the
2 protections of the Labor Code and the Wage Order.

3 22. At all relevant times, the Defendants failed to compensate Marquez and all of the
4 other Class Members for all hours worked at the applicable minimum or regular rates of pay. Due
5 to chronic understaffing and Defendants' customer service requirements, the Defendants denied
6 Marquez and all other Class Members their earned duty-free meal periods. The Defendants
7 compelled Marquez and all other Class Members to remain in their assigned work areas and
8 available to receive work-related directions. The Defendants' managers directed Marquez and all
9 other Class Members to delay or forgo 30-minute meal periods when the restaurant was
10 understaffed. The Defendants prohibited Marquez and all other Class Members from taking a
11 meal period if there was no one available to cover for them. When Marquez and the Class
12 Members skipped or delayed meal periods, the Defendants edited their timesheets to indicate that
13 they had taken a timely meal period and did not pay them for the time. In addition, the Defendants
14 compelled Marquez and all other Class Members to perform work such as cleaning after clocking
15 out at the end of their shifts. Marquez and all other Class Members were not paid for such "off-
16 the-clock" work. Further, the minimum wage in San Diego was \$16.30 throughout Marquez's
17 employment with the Defendants. However, the Defendants only paid Marquez and all the other
18 Class Members \$15.50 per hour.

19 23. At all relevant times, the Defendants failed to compensate Marquez and all of the
20 other Class Members at the correct rates of pay for all hours worked over eight in a day and over
21 40 in a week. Due to chronic understaffing and Defendants' customer service requirements, the
22 Defendants denied Marquez and all other Class Members their earned duty-free meal periods.
23 The Defendants compelled Marquez and all other Class Members to remain in their assigned work
24 areas and available to receive work-related directions. The Defendants' managers directed
25 Marquez and all other Class Members to delay or forgo 30-minute meal periods when the
26 restaurant was understaffed. The Defendants prohibited Marquez and all other Class Members
27 from taking a meal period if there was no one available to cover for them. When Marquez and the
28 Class Members skipped or delayed meal periods, the Defendants edited their timesheets to
indicate that they had taken a timely meal period. In addition, the Defendants compelled Marquez
and all other Class Members to perform work such as cleaning after clocking out at the end of
their shifts. Marquez and all other Class Members were not paid for such "off-the-clock" work.



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1 Further, on days that Marquez and all of the other Class Members worked over eight hours and
2 on weeks that Marquez and all of the other Class Members worked over 40 hours, the Defendants
3 paid Marquez and all of the other Class Members at the regular rate of pay for all overtime hours
4 worked rather than at the overtime rate.

5 24. At all relevant times, the Defendants failed to provide Marquez and all of the other
6 Class Members with all timely 30-minute, off-duty meal periods. The Defendants denied Marquez
7 and all of the other Class Members their 30-minute, off-duty meal period within the first five
8 hours of work. Due to chronic understaffing and Defendants' customer service requirements, the
9 Defendants denied Marquez and all other Class Members their earned duty-free meal periods.
10 The Defendants compelled Marquez and all other Class Members to remain in their assigned work
11 areas and available to receive work-related directions. The Defendants' managers directed
12 Marquez and all other Class Members to delay or forgo 30-minute meal periods when the
13 restaurant was understaffed. The Defendants prohibited Marquez and all other Class Members
14 from taking a meal period if there was no one available to cover for them. When Marquez and the
15 Class Members skipped or delayed meal periods, the Defendants edited their timesheets to
16 indicate that they had taken a timely meal period. Furthermore, the Defendants failed to pay
17 premium wages for days on which they failed to provide Marquez and all of the other Class
18 Members with timely meal periods as required by law.

19 25. At all relevant times, the Defendants failed to authorize and permit Marquez and
20 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
21 worked or major portion thereof. The Defendants did not seek an exemption from the rest period
22 protections of the Wage Order from the California Division of Labor Standards Enforcement.
23 Due to chronic understaffing and Defendants' customer service requirements, the Defendants
24 denied Marquez and all other Class Members their earned duty-free rest breaks. The Defendants
25 compelled Marquez and all other Class Members to remain in their assigned work areas and
26 available to receive work-related directions. The Defendants' managers directed Marquez and all
27 other Class Members to delay or forgo 10-minute rest breaks when the restaurant was
28 understaffed. The Defendants prohibited Marquez and all other Class Members from taking a rest
break if there was no one available to cover for them. In fact, on at least one occasion, the
Defendants posted a sign that stated, "DE 6:30pm a 9:30pm NADIEN puede tomar BREAK[.]
NADIEN." (Translation: "From 6:30pm to 9:30pm NO ONE can take a BREAK[.] NO ONE.")



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Moreover, the Defendants failed to pay Marquez and all of the other Class Members premium wages on workdays the Defendants failed to provide Marquez and all of the other Class Members with 10-minute rest periods every four hours worked or major fraction thereof as required by law.

26. At all relevant times, the Defendants required Marquez and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Marquez and all of the other Class Members to supply mobile phones, telecom, and server books to perform their job duties. However, the Defendants did not provide these items and did not reimburse Marquez and the other Class Members for these items. The Defendants required Marquez and all of the other Class Members to supply mobile phones and pay for mobile phone plans to perform their job duties, including but not limited to receiving and responding to work-related instructions. Further, the Defendants required Marquez and all of the other Class Members to supply server books to perform their job duties. However, the Defendants did not provide these items and did not reimburse Marquez and the other Class Members for these items.

27. At all relevant times, the Defendants unlawfully deducted wages belonging to Marquez and all of the other Class Members.

28. At all relevant times, the Defendants failed to issue to Marquez and all of the other Class Members complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on the wage statements they issued to Marquez and all of the other Class Members the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and other required information.

29. At all relevant times, the Defendants also failed to timely pay Marquez and all of the other Class Members all earned wages as described above during and at the conclusion of employment.

30. At all relevant times, the Defendants failed to provide Marquez and all of the other Class Members with storage facilities and suitable resting facilities.

31. At all relevant times, the Defendants failed to maintain accurate employee records of Marquez and all of the other Class Members.

32. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'



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unlawful practices and policies, Plaintiff and the Class Members were:

- A. Not provided with all off-duty meal periods;
- B. Not authorized and permitted to take all rest break periods;
- C. Not paid one hour's pay for each workday in which Defendants failed to authorize and permit them to take one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, minimum, regular, and overtime wages for work performed while clocked out;
- F. Not indemnified for all necessary business expenditures incurred during the discharge of their duties;
- G. Not provided with accurate and complete wage statements; and
- H. Not timely paid all earned and unpaid wages at the time their employment ended.

FIRST CAUSE OF ACTION

FAILURE TO PAY, DEDUCTING, OR WITHHOLDING ALL WAGES AT THE CORRECT RATES

Lab. Code §§ 221, 510, 558.1, 1194, 1197, and 1198

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

33. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

34. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

35. Section 2 of the Wage Order defines "hours worked" 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."

36. Section 3 of the Wage Order states:

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to



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1 employees 18 years of age or over and to employees 16 or
2 17 years of age who are not required by law to attend
3 school and are not otherwise prohibited by law from
4 engaging in the subject work. Such employees shall not be
5 employed more than eight (8) hours in any workday or
6 more than 40 hours in any workweek unless the employee
7 receives one and one-half (1 ½) times such employee's
8 regular rate of pay for all hours worked over 40 hours in
9 the workweek. Eight (8) hours of labor constitutes a day's
10 work. Employment beyond eight (8) hours in any workday
11 or more than six (6) days in any workweek is permissible
12 provided the employee is compensated for such overtime
13 at not less than:

- 14 (a) One and one-half (1 ½) times the employee's
15 regular rate of pay for all hours worked in excess of
16 eight (8) hours up to and including 12 hours in any
17 workday, and for the first eight (8) hours worked on
18 the seventh (7th) consecutive day of work in a
19 workweek.
- 20 (b) Double the employee's regular rate of pay for all
21 hours worked in excess of 12 hours in any workday
22 and for all hours worked in excess of eight (8) hours
23 on the seventh (7th) consecutive day of work in a
24 workweek.
- 25 (c) The overtime rate of compensation required to be
26 paid to a nonexempt full-time salaried employee
27 shall be computed by using the employee's regular
28 hourly salary as one-fortieth (1/40) of the
employee's weekly salary.

37. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consists of all hours that
an employer has actual or constructive knowledge that employees are working.

38. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight
hours in one workday and any work in excess of 40 hours in any one
workweek and the first eight hours worked on the seventh day of work in
any one workweek shall be compensated at the rate of no less than one and
one-half times the regular rate of pay for an employee. Any work in excess
of 12 hours in one day shall be compensated at the rate of no less than twice



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the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

39. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

40. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

41. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

42. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

43. At all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, and overtime wages for all minimum, regular, and overtime hours, respectively, that they worked at the correct rates of pay.

44. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.

B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

45. In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be



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violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Luis Diaz was an employer of Marquez and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Marquez seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Luis Diaz that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

C. UNLAWFUL WAGE DEDUCTIONS

46. Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Defendants deducted wages from the wages earned by Marquez and all of the other Class Members for hours spent working in violation of Labor Code § 221.

47. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ deduction of wages belonging to Plaintiff and the other Class Members in violation of California law.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Lab. Code §§ 226.7, 512, 558.1, and 1198

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

48. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

49. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections



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of California Labor Code §§ 226.7, 512, and 1198, and the Wage Order.

50. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

51. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

52. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.



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(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

53. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

54. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

55. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. At all relevant times, the Defendants failed to provide Marquez and all of the other Class Members with all timely meal periods. The Defendants denied Marquez and all of the other Class Members their 30-minute off-duty meal period within the first five hours of work. Due to chronic understaffing and Defendants' customer service requirements, the Defendants denied Marquez and all other Class Members their earned duty-free meal periods. The Defendants compelled Marquez and all other Class Members to remain in their assigned work areas and available to receive work-related directions. The Defendants' managers directed Marquez and all other Class Members to delay or



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1 forgo 30-minute meal periods when the restaurant was understaffed. The Defendants prohibited
2 Marquez and all other Class Members from taking a meal period if there was no one available to
3 cover for them. When Marquez and the Class Members skipped or delayed meal periods, the
4 Defendants edited their timesheets to indicate that they had taken a timely meal period.
5 Furthermore, the Defendants failed to pay premium wages for days on which they failed to
6 provide Marquez and all of the other Class Members with timely meal periods.

7 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
9 which resulted in Defendants not providing Plaintiff and the Class Members with all off-duty
10 meal periods required by California law.

11 57. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
12 suffered damages in amounts subject to proof to the extent they were not paid additional wages
13 owed for all meal periods not provided to them.

14 58. By reason of the above, Plaintiff and the Class Members are entitled to premium
15 wages for workdays in which one or more meal periods were not provided to them pursuant to
16 California Labor Code § 226.7.

17 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
18 **LABOR CODE**

19 59. In relevant part, Labor Code section 558.1 states:

- 20 (c) Any employer or other person acting on behalf of an employer,
21 who violates, or causes to be violated, any provision regulating
22 minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be
24 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
25 held liable as the employer for such violation.
- 26 (d) For purposes of this section, the term "other person acting on
27 behalf of an employer" is limited to a natural person who is an
28 owner, director, officer, or managing agent of the employer, and
the term "managing agent" has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

At all relevant times, Luis Diaz was an employer of Marquez and all of the other Class Members,
and/or "owner," "managing agent," and/or "officer" of the Defendants and the other employers
identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed



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1 and exercised control over the wages, hours, and/or working conditions of the Class Members,
2 and caused the violations to the Labor Code and the Wage Order described above. On behalf of
3 herself and all of the other Class Members, Marquez seeks an award of unpaid wages, interest,
4 restitution, statutory penalties, liquidated damages, attorneys' fees, costs, and related relief against
5 Luis Diaz that is the same as the award of against the other Defendants on the same grounds for
6 which Plaintiff seeks against the Defendants.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

9 **Lab. Code §§ 226.7, 558.1, and 1198**

10 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

11 60. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

12 61. At all relevant times during the applicable limitations period, Plaintiff and the
13 Class Members have been employees of Defendants and entitled to the benefits and protections
14 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

15 62. In relevant part, California Labor Code § 1198 states:

16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment
19 of any employee for longer hours than those fixed by the order or
20 under conditions of labor prohibited by the order is unlawful.

21 63. In relevant part, Section 12 of the Wage Order states:

22 **Rest Periods**

23 (A) Every employer shall authorize and permit all employees
24 to take rest periods, which insofar as practicable shall be in the
25 middle of each work period. The authorized rest period time shall
26 be based on the total hours worked daily at the rate of ten (10)
27 minutes net rest time per four (4) hours or major fraction thereof.
28 However, a rest period need not be authorized for employees
whose total daily work time is less than three and one-half (3 1/2)
hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this Order, the



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1 employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each work day that
the rest period is not provided.

3 64. In relevant part, California Labor Code § 226.7 states:

4 (b) An employer shall not require an employee to work during
5 a meal or rest period mandated pursuant to an applicable
6 statute, or applicable regulation, standard, or order of the
7 Industrial Welfare Commission, the Occupational Safety
8 and Health Standards Board, or the Division of
Occupational Safety and Health.

9 (c) If an employer fails to provide an employee a meal period
10 or rest period in accordance with a state law, including, but
11 not limited to, an applicable statute or applicable
12 regulation, standard, or order of the Industrial Welfare
13 Commission, the Occupational Safety and Health
14 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

15 65. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
16 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
17 of work, or major fraction thereof.

18 66. Defendants intentionally failed to authorize and permit Plaintiff and the Class
19 Members to take all 10-minute rest periods free from any work duties in accordance with the
20 Wage Order.

21 67. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
22 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
23 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
24 Plaintiff and the other Class Members to take timely rest periods.

25 68. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
26 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
27 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
28 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed



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1 to authorize and permit them to take 10-minute rest periods every four hours worked or major
2 fraction thereof.

3 69. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
5 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
6 take all rest breaks required by California law.

7 70. Defendants failed to provide Plaintiff with all required rest breaks in accordance
8 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
9 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
10 which resulted in Defendants not providing the Class Members with all rest breaks required by
11 California law.

12 71. Defendants failed to pay Plaintiff the additional wages required by California
13 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
14 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
15 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
16 Class Members with additional wages for all rest breaks not provided to them as required by
17 California Labor Code § 226.7.

18 72. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
19 suffered damages in amounts subject to proof to the extent they were not paid additional wages
20 owed for all rest breaks not provided to them.

21 73. By reason of the above, Plaintiff and the Class Members are entitled to premium
22 wages for workdays in which one or more rest breaks were not provided to them pursuant to
23 California Labor Code § 226.7.

24 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
25 **LABOR CODE**

26 74. In relevant part, Labor Code section 558.1 states:

- 27 (e) Any employer or other person acting on behalf of an employer,
28 who violates, or causes to be violated, any provision regulating
minimum wages or hours and days of work in any order of the
Industrial Welfare Commission, or violates, or causes to be
violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.



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1 (f) For purposes of this section, the term “other person acting on
2 behalf of an employer” is limited to a natural person who is an
3 owner, director, officer, or managing agent of the employer, and
4 the term “managing agent” has the same meaning as in subdivision
(b) of Section 3294 of the Civil Code.

5 At all relevant times, Luis Diaz was an employer of Marquez and all of the other Class Members,
6 and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers
7 identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed
8 and exercised control over the wages, hours, and/or working conditions of the Class Members,
9 and caused the violations to the Labor Code and the Wage Order described above. On behalf of
10 herself and all of the other Class Members, Marquez seeks an award of unpaid wages, interest,
11 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against
12 Luis Diaz that is the same as the award of against the other Defendants on the same grounds for
which Plaintiff seeks against the Defendants.

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE STORAGE FACILITIES AND SUITABLE RESTING**
15 **FACILITIES**

16 **Lab. Code § 1198**

17 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

18 75. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

19 76. Section 13 of Wage Order states

20 (A) Employers shall provide suitable lockers, closets, or equivalent for the
21 safekeeping of employees’ outer clothing during working hours, and when
22 required, for their work clothing during non-working hours. When the
23 occupation requires a change of clothing, change rooms or equivalent
24 space shall be provided in order that employees may change their clothing
25 in reasonable privacy and comfort. These rooms or spaces may be adjacent
26 to but shall be separate from toilet rooms and shall be kept clean.

27 ///



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NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

77. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

78. Throughout the relevant time period, Defendants failed to provide Marquez and all of the other Class Members with storage facilities and suitable resting facilities.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

Lab. Code §§ 558.1, 1198, 2802

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

79. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

80. In pertinent part, California Labor Code § 2802(a) states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

81. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

82. At all relevant times, Defendants required Plaintiff and the Class Members to incur certain business expenses in the course of performing their duties.

83. As described above, the Defendants required Marquez and all of the other Class Members to incur certain business expenses in the course of performing their duties. The Defendants required Marquez and all of the other Class members to supply mobile phones, telecom, and server books to perform their job duties. However, the Defendants did not provide these items and did not reimburse Marquez and the other Class members for these items.

84. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’ failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.



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1 **A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
2 **LABOR CODE**

3 85. In relevant part, Labor Code section 558.1 states:

4 (g) Any employer or other person acting on behalf of an employer,
5 who violates, or causes to be violated, any provision regulating
6 minimum wages or hours and days of work in any order of the
7 Industrial Welfare Commission, or violates, or causes to be
8 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
9 held liable as the employer for such violation.

10 (h) For purposes of this section, the term “other person acting on
11 behalf of an employer” is limited to a natural person who is an
12 owner, director, officer, or managing agent of the employer, and
13 the term “managing agent” has the same meaning as in subdivision
14 (b) of Section 3294 of the Civil Code.

15 At all relevant times, Luis Diaz was an employer of Marquez and all of the other Class Members,
16 and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers
17 identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed
18 and exercised control over the wages, hours, and/or working conditions of the Class Members,
19 and caused the violations to the Labor Code and the Wage Order described above. On behalf of
20 herself and all of the other Class Members, Marquez seeks an award of unpaid wages, interest,
21 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against
22 Luis Diaz that is the same as the award of against the other Defendants on the same grounds for
23 which Plaintiff seeks against the Defendants.

24 **SIXTH CAUSE OF ACTION**

25 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

26 **Lab. Code §§ 226 and 558.1**

27 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

28 **A. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
STATEMENTS

86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

87. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
statement showing:



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- 1 A. Gross wages earned;
- 2 B. Total hours worked by the employee, except for any employee whose
- 3 compensation is solely based on a salary and who is exempt from payment of overtime under
- 4 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 5 C. The number of piece rate units earned and any applicable piece rate if the
- 6 employee is paid on a piece-rate basis;
- 7 D. All deductions, provided that all deductions made on written orders of the
- 8 Employee may be aggregated and shown as one item;
- 9 E. Net wages earned;
- 10 F. The inclusive dates of the period for which the employee is paid;
- 11 G. The name of the employee and his or her social security number, except
- 12 that by January 1, 2008, only the last four digits of his or her social security number or an
- 13 employee identification number other than a social security number may be shown on the itemized
- 14 statement;
- 15 H. The name and address of the legal entity that is the employer; and
- 16 I. All applicable hourly rates in effect during the pay period and the
- 17 corresponding number of hours worked at each hourly rate by the employee.

18 88. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury

19 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if

20 the employer fails to provide accurate and complete information as required by California Labor

21 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement

22 alone one or more of the following:

- 23 A. The amount of the gross wages or net wages paid to the employee during
- 24 the pay period or any of the other information required to be provided on the itemized wage
- 25 statement pursuant to California Labor Code § 226(a);
- 26 B. Which deductions the employer made from gross wages to determine the
- 27 net wages paid to the employee during the pay period;
- 28 C. The name and address of the employer and, if the employer is a farm labor
- contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
- and address of the legal entity that secured the services of the employer during the pay period;

///



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1 D. The name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

4 89. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
5 means a reasonable person would be able to readily ascertain the information without reference
6 to other documents or information.

7 90. As alleged herein, at all relevant times during the applicable limitations period,
8 Defendants violated California Labor Code section 226 because they did not properly and
9 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
10 the corresponding number of hours worked at each rate by the employee and other requirements
11 of California Labor Code section 226. Defendants failed to state in the wage statements they
12 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
13 including, but not limited to, regular and overtime wages for work they performed off-the-clock
14 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
15 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
16 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
17 Members that state all minimum wages earned, all regular wages earned, all overtime wages
18 earned, all meal period premium wages earned, all rest break premium wages earned, all
19 unlawfully deducted wages, all gross wages earned, all hours worked at each rate of pay, and
20 other required information.

21 91. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
22 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
23 the other Class Members with accurate wage statements but intentionally provided wage
24 statements that Defendants knew were not accurate.

25 92. As a result of being provided with inaccurate wage statements by Defendants,
26 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
27 wage statements were violated, and they were misled about the amount of wages they had actually
28 earned and were owed. In addition, the absence of accurate information on their wage statements
prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
and mathematical computations to determine the amounts of wages owed, has caused difficulty
and expense in attempting to reconstruct time and pay records and/or has led to the submission of



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1 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
2 and the other Class Members were not able to ascertain from the wage statements whether
3 Defendants complied with their obligations under California Labor Code section 226(a).

4 **B. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE**
5 **LABOR CODE**

6 93. In relevant part, Labor Code section 558.1 states:

- 7 (i) Any employer or other person acting on behalf of an employer,
8 who violates, or causes to be violated, any provision regulating
9 minimum wages or hours and days of work in any order of the
10 Industrial Welfare Commission, or violates, or causes to be
11 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
12 held liable as the employer for such violation.
13
14 (j) For purposes of this section, the term “other person acting on
15 behalf of an employer” is limited to a natural person who is an
16 owner, director, officer, or managing agent of the employer, and
17 the term “managing agent” has the same meaning as in subdivision
18 (b) of Section 3294 of the Civil Code.

19 At all relevant times, Luis Diaz was an employer of Marquez and all of the other Class Members,
20 and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers
21 identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed
22 and exercised control over the wages, hours, and/or working conditions of the Class Members,
23 and caused the violations to the Labor Code and the Wage Order described above. On behalf of
24 herself and all of the other Class Members, Marquez seeks an award of unpaid wages, interest,
25 restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against
26 Luis Diaz that is the same as the award of against the other Defendants on the same grounds for
27 which Plaintiff seeks against the Defendants.

28 **SEVENTH CAUSE OF ACTION**

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, 203, and 558.1)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

95. At all relevant times during the applicable limitations period, Plaintiff and the
Class have been non-exempt employees of Defendants and entitled to the benefits and protections



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of California Labor Code §§ 201, 202, and 203, and the Wage Order.

96. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

97. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

98. The Defendants failed to pay Marquez and all of the other Class Members whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Defendants, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and deducted wages. Additionally, the Defendants failed to issue to Marquez and all of the other Class members whose employment ended their final paychecks until the next regular pay day following the termination.

99. By failing to pay such earned wages to Plaintiff and the Class Members, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

100. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Class Members all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

101. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

A. PERSON ACTING ON BEHALF OF EMPLOYERS WHO VIOLATES THE LABOR CODE

102. In relevant part, Labor Code section 558.1 states:

- (k) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the



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Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (l) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

103. At all relevant times, Luis Diaz was an employer of Marquez and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Class Members, Marquez seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Luis Diaz that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

104. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

105. At all relevant times during the applicable limitations period, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

106. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

107. As a result of Defendants’ unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class



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Members were deprived of minimum wages, regular wages, overtime wages, missed meal period premium wages, missed rest period premium wages, phone expenses, telecom expenses, server book expenses, unlawfully deducted wages, and comparable money and property.

108. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

109. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine.

NINTH CAUSE OF ACTION

CIVIL PENALTIES

Lab. Code §§ 2698, *et seq.*

(By Plaintiff, on behalf of herself, the Aggrieved Employees, and the State of California, against all Defendants)

110. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

111. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning May 3, 2020, and ending on the date that final judgment is entered in this action.

112. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, 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.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as



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1 corrections on the paystub for the next regular pay period. Any corrections set out
2 in a subsequently issued paystub shall state the inclusive dates of the pay period
3 for which the employer is correcting its initial report of hours worked.

4 (c) However, when employees are covered by a collective bargaining
5 agreement that provides different pay arrangements, those arrangements shall
6 apply to the covered employees.

7 (d) The requirements of this section shall be deemed satisfied by the payment
8 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
9 more than seven calendar days following the close of the payroll period.

10 113. Defendants paid wages to employees on regular intervals. Defendants, however,
11 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
12 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
13 intervals for all wages earned and all hours worked.

14 114. During the applicable time period, Defendants violated California Labor Code §§
15 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, 1198, and 2802.

16 115. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
17 behalf of themselves and other current or former employees, to bring a civil action to recover civil
18 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

19 116. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff, the State, and the
20 Aggrieved Employees, are entitled to recover civil penalties for each of the Defendants' violations
21 of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1174, 1194,
22 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

23 A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
24 each Aggrieved Employee for each initial violation and two hundred dollars
25 (\$200.00) for each Aggrieved Employee for each subsequent, willful, or
26 intentional violation (penalty amounts established by California Labor Code §
27 210).

28 B. For violations of California Labor Code § 221, one hundred dollars (\$100.00) for
each aggrieved employee for each initial violation and two hundred dollars
(\$200.00) for each subsequent violation (penalty amounts established by
California Labor Code § 225.5).

C. For violations of California Labor Code § 226(a), two hundred fifty dollars



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1 (\$250.00) for each Aggrieved Employee for initial violation and one thousand
2 dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation
3 (penalty amounts established by California Labor Code § 226.3).

4 D. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for
5 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
6 for each Aggrieved Employee for each subsequent violation, per pay period
7 (penalty amounts established by California Labor Code § 558).

8 E. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for
9 each Aggrieved Employee for each violation of Labor Code § 1174 (penalty
10 amounts established by Labor Code § 1174.5).

11 F. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for
12 each Aggrieved Employee for each initial and intentional violation and two
13 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent
14 violation, per pay period (regardless of whether the initial violations were
15 intentionally committed) (penalty amounts established by California Labor Code
16 § 1197.1).

17 G. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and
18 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
19 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
20 Employee per pay period for each subsequent violation (penalty amounts
21 established by California Labor Code § 2699(f)(2)).

22 117. Plaintiff has complied with the procedures for bringing suit specified in California
23 Labor Code § 2699.3. By letters dated May 1, 2024 and May 7, 2024, Plaintiff filed written notice
24 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
25 by certified mail to Defendants of the specific provisions of the California Labor Code alleged to
26 have been violated, including the facts and theories to support the alleged violations. A true and
27 correct copy of the notice to the LWDA dated May 1, 2024 is attached as Exhibit A. A true and
28 correct copy of the notice to the LWDA dated May 7, 2024 is attached as Exhibit B. Plaintiff
submitted her May 1, 2024 LWDA notice with a fee in the amount of \$75.00. The LWDA has
failed to take action in response within 65 calendar days of the dates of Plaintiff’s notices, but
Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it



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1 does not intend to investigate these allegations.

2 ///

3 118. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
4 Employees are entitled to an award of civil penalties, reasonable attorneys' fees, and costs in
5 connection with their claims for civil penalties.

6 **V. PRAYER FOR RELIEF**

7 119. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
8 relief and judgment against Defendants as follows:

9 A. An order that the action be certified as a class action with respect to
10 Plaintiff's claims for violations of California law;

11 B. An order that Plaintiff be appointed class representative;

12 C. An order that counsel for Plaintiff be appointed class counsel;

13 D. Unpaid wages, including minimum, regular, overtime, missed meal period,
14 and missed rest period wages;

15 E. Liquidated damages;

16 F. Statutory penalties, including waiting time penalties;

17 G. Civil penalties;

18 H. Restitution;

19 I. Declaratory relief;

20 J. Actual damages;

21 K. Pre-judgment interest;

22 L. Costs of suit;

23 M. Reasonable attorneys' fees; and

24 N. Such other relief as the Court deems just and proper.

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VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: July 11, 2024

By:



DAVID G. SPIVAK and LAUREN R. DAVIS, Attorneys for Plaintiff(s), ANIKA MARQUEZ, and all others similarly situated



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EXHIBIT A



THE SPIVAK LAW FIRM

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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 1, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Anika Marquez /Los Panchos Tacos & Cantina

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Anika Marquez (hereafter “Marquez” or “Complainant”) provides notice that Team Los Panchos, Inc, a California corporation, and related entities (collectively “the Los Panchos Tacos & Cantina Employers” or “the Employers”) violated her rights and those of all other individuals the Los Panchos Tacos & Cantina Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including “back-of-house” and “front-of-house” employees, including, but not limited to, servers, server assistants, cashiers, bussers, food runners, and line cooks, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Marquez hereby provides this notice to the Labor & Workforce Development Agency and the Los Panchos Tacos & Cantina Employers and their agents and representatives.

At all relevant times, the Los Panchos Tacos & Cantina Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Marquez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately June 28, 2023, the Los Panchos Tacos & Cantina Employers began to employ Marquez in San Diego in the position of hourly, non-exempt server. The Los Panchos Tacos & Cantina Employers continuously employed her in that capacity until on or about July 19, 2023, when her employment ended.

At all relevant times, the Los Panchos Tacos & Cantina Employers issued wages to Marquez and all of the other Aggrieved Employees on a regular basis and paid them by the hour. At all relevant times, the Los Panchos Tacos & Cantina Employers classified Marquez and all of the other Aggrieved Employees as hourly, non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. In addition, the Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to perform work such as cleaning after clocking out at the end of their shifts. Marquez and all other Aggrieved Employees were not paid for such "off-the-clock" work. Further, the minimum wage in San Diego was \$16.30 throughout Marquez's employment with the Los Panchos Tacos & Cantina Employers. However, the Los Panchos Tacos & Cantina Employers only paid Marquez and all the other Aggrieved Employees \$15.50 per hour.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over

eight in a day and over 40 in a week. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. In addition, the Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to perform work such as cleaning after clocking out at the end of their shifts. Marquez and all other Aggrieved Employees were not paid for such "off-the-clock" work. Further, on days that Marquez and all of the other Aggrieved Employees worked over eight hours and on weeks that Marquez and all of the other Aggrieved Employees worked over 40 hours, the Los Panchos Tacos & Cantina Employers paid Marquez and all of the other Aggrieved Employees at the regular rate of pay for all overtime hours worked rather than at the overtime rate.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Los Panchos Tacos & Cantina Employers denied Marquez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos &

Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. Furthermore, the Los Panchos Tacos & Cantina Employers failed to pay premium wages for days on which they failed to provide Marquez and all of the other Aggrieved Employees with timely meal periods as required by law.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to authorize and permit Marquez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Los Panchos Tacos & Cantina Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free rest breaks. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 10-minute rest breaks when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a rest break if there was no one available to cover for them. In fact, on at least one occasion, the Los Panchos Tacos & Cantina Employers posted a sign that stated, "*DE 6:30pm a 9:30pm NADIEN puede tomar BREAK[.] NADIEN.*" (Translation: "From 6:30pm to 9:30pm NO ONE can take a BREAK[.] NO ONE." Moreover, the Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees premium wages on workdays the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof as required by law.

At all relevant times, the Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply mobile phones, telecom, and server books to perform their job duties. However, the Los Panchos Tacos & Cantina Employers did not provide these items and did not reimburse Marquez and the other Aggrieved Employees for these items. The Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply

mobile phones and pay for mobile phone plans to perform their job duties. Further, the Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply server books to perform their job duties. However, the Los Panchos Tacos & Cantina Employers did not provide these items and did not reimburse Marquez and the other Aggrieved Employees for these items.

The Los Panchos Tacos & Cantina Employers unlawfully deducted wages belonging to Marquez and all of the other Aggrieved Employees.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to issue to Marquez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Los Panchos Tacos & Cantina Employers knowingly and intentionally failed to state on the wage statements they issued to Marquez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and other required information.

The Los Panchos Tacos & Cantina Employers also failed to timely pay Marquez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with storage facilities and change rooms.

The Los Panchos Tacos & Cantina Employers failed to maintain accurate employee records of Marquez and all of the other Aggrieved Employees.

For the reasons stated herein, Marquez alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;

- (b) The Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Los Panchos Tacos & Cantina Employers failed to authorize and permit Marquez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees at one hour's pay for each day in which the Los Panchos Tacos & Cantina Employers failed to provide them with one or more meal periods as required by law;
- (e) The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees at one hour's pay for each day in which the Los Panchos Tacos & Cantina Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Los Panchos Tacos & Cantina Employers failed to indemnify Marquez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Los Panchos Tacos & Cantina Employers unlawfully deducted wages belonging to Marquez and all of the other Aggrieved Employees;
- (h) The Los Panchos Tacos & Cantina Employers knowingly and intentionally failed to provide Marquez and all of the other Aggrieved Employees with accurate wage statements;
- (i) The Los Panchos Tacos & Cantina Employers willfully failed to timely pay Marquez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Los Panchos Tacos & Cantina Employers and when their employment ended;

- (j) The Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with storage facilities and change rooms; and
- (k) The Los Panchos Tacos & Cantina Employers failed to maintain accurate employment records pertaining to Marquez and all of the other Aggrieved Employees.

Accordingly, Marquez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Los Panchos Tacos & Cantina Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;
- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;

- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Los Panchos Tacos & Cantina Employers, Marquez, and all of the Aggrieved Employees were covered by the Wage Order because the Los Panchos Tacos & Cantina Employers operated, and Marquez, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Marquez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. Further, the Los Panchos Tacos & Cantina Employers indicated that Marquez and all other Aggrieved Employees took meal periods, even when they did not take meal periods. In addition, the Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to perform work such as cleaning after clocking out at the end of their shifts. Marquez and all other Aggrieved Employees were not paid for such "off-the-clock" work. Further, the minimum wage in San Diego was \$16.30 throughout Marquez's employment with the Los Panchos Tacos & Cantina Employers. However, the Los Panchos Tacos & Cantina Employers only paid Marquez and all the other Aggrieved Employees \$15.50 per hour.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Los Panchos Tacos & Cantina Employers, Marquez and all of the other Aggrieved Employees earned rest period premium wages and meal period premium wages during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Los Panchos Tacos & Cantina Employers failed to pay to Marquez and all of the other Aggrieved Employees rest period premium wages, meal period premium wages, overtime premium pay on such rest period premium wages and meal period premium wages, and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime, wages for all hours they worked at the correct rates of pay. Accordingly, Marquez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to

Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with all timely meal periods. The Los Panchos Tacos & Cantina Employers denied Marquez and all of the other

Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. Furthermore, the Los Panchos Tacos & Cantina Employers failed to pay premium wages for days on which they failed to provide Marquez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Marquez now seeks civil penalties for these Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Los Panchos Tacos & Cantina Employers failed to authorize and permit Marquez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Los Panchos Tacos & Cantina Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free rest breaks. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 10-minute rest breaks when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a rest break if there was no one available to cover for them. Moreover, the Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees premium wages on workdays the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Marquez now seeks civil penalties for these Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When 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.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply mobile phones, telecom, and server books to perform their job duties. However, the Los Panchos Tacos & Cantina Employers did not provide these items and did not reimburse Marquez and

the other Aggrieved Employees for these items. Accordingly, Marquez seeks civil penalties for these Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Los Panchos Tacos & Cantina Employers deducted wages from the wages earned by Marquez and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Marquez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Los Panchos Tacos & Cantina Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee, and other requirements of Labor Code section 226. The Los Panchos Tacos & Cantina Employers failed to state in the wage statements they issued to Marquez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Los Panchos Tacos & Cantina Employers knowingly and intentionally failed to state on the wage statements they issued to Marquez and all of the other Aggrieved Employees the earned

but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, all hours worked at each rate of pay, and other required information.

Accordingly, Marquez seeks civil penalties for the Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation, at the intervals stated above. As a result, the Los Panchos Tacos & Cantina Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Marquez now seeks civil penalties for the Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with the Los Panchos Tacos & Cantina Employers, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation. By failing to pay Marquez and all of the other Aggrieved Employees as set forth above at the end of employment, the Los Panchos Tacos & Cantina Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Marquez seeks civil penalties from the Los Panchos Tacos & Cantina Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Storage Facilities, Lockers, and Change Rooms
(Lab. Code § 1198)

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Los Panchos Tacos & Cantina Employers failed to provide lockers, closets, storage facilities, and changing rooms for use by Marquez and all of the other Aggrieved Employees. If within 33 days of this notice, the Los Panchos Tacos & Cantina Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order

mentioned above, Marquez, on behalf of herself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Los Panchos Tacos & Cantina Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, all hours worked at each rate of pay, and related compensation. As a result, the Los Panchos Tacos & Cantina Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Marquez's and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Marquez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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LWDA / The Los Panchos Tacos & Cantina Employers

Re: Anika Marquez

May 1, 2024

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Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Anika Marquez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

Lauren Davis, Esq.

David@spivaklaw.com

Lauren@spivaklaw.com

cc: Anika Marquez
Walter L. Haines, Esq.

Team Los Panchos, Inc
c/o Agent for Service of Process
Anna Herrera
441 Washington St
San Diego, CA 92103

EXHIBIT B



SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 7, 2024

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Anika Marquez / Los Panchos Tacos & Cantina
LWDA Case No.: LWDA- CM-1025643-24

To Whom It May Concern:

This is a first supplemental notice to the notice dated May 1, 2024 (enclosed), which it incorporates by reference. It includes Luis Diaz within the definition of “the Los Panchos Tacos & Cantina Employers” and “the Employers” and states facts and theories showing his liability under Labor Code sec. 558.1. It also adds that the payroll cycle was weekly. In addition, this supplemental notice changes references from “changing rooms” to “resting facilities” to describe liability under Labor Code sec. 1198.

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Anika Marquez (hereafter “Marquez” or “Complainant”) provides notice that Team Los Panchos, Inc, a California corporation, Luis Diaz, a natural person, and related entities (collectively “the Los Panchos Tacos & Cantina Employers” or “the Employers”) violated her rights and those of all other individuals the Los Panchos Tacos & Cantina Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including “back-of-house” and “front-of-house” employees, including, but not limited to, servers, server assistants, cashiers, bussers, food runners, and line cooks, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 221, 226, 226.7, 510, 512, 558.1, 1174, 1194, 1197, 1198, 2802, and other Labor Code statutes. On behalf of herself and all other Aggrieved Employees, Marquez hereby provides this notice to the Labor & Workforce Development Agency and the Los Panchos Tacos & Cantina

Employers and their agents and representatives.

At all relevant times, the Los Panchos Tacos & Cantina Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Marquez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately June 28, 2023, the Los Panchos Tacos & Cantina Employers began to employ Marquez in San Diego in the position of hourly, non-exempt server. The Los Panchos Tacos & Cantina Employers continuously employed her in that capacity until on or about July 19, 2023, when her employment ended.

At all relevant times, the Los Panchos Tacos & Cantina Employers issued wages to Marquez and all of the other Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times, the Los Panchos Tacos & Cantina Employers classified Marquez and all of the other Aggrieved Employees as hourly, non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers’ customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers’ managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. In addition, the Los Panchos Tacos & Cantina Employers compelled Marquez

and all other Aggrieved Employees to perform work such as cleaning after clocking out at the end of their shifts. Marquez and all other Aggrieved Employees were not paid for such “off-the-clock” work. Further, the minimum wage in San Diego was \$16.30 throughout Marquez’s employment with the Los Panchos Tacos & Cantina Employers. However, the Los Panchos Tacos & Cantina Employers only paid Marquez and all the other Aggrieved Employees \$15.50 per hour.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees at the correct rates of pay for all hours worked over eight in a day and over 40 in a week. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers’ customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers’ managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. In addition, the Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to perform work such as cleaning after clocking out at the end of their shifts. Marquez and all other Aggrieved Employees were not paid for such “off-the-clock” work. Further, on days that Marquez and all of the other Aggrieved Employees worked over eight hours and on weeks that Marquez and all of the other Aggrieved Employees worked over 40 hours, the Los Panchos Tacos & Cantina Employers paid Marquez and all of the other Aggrieved Employees at the regular rate of pay for all overtime hours worked rather than at the overtime rate.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Los Panchos Tacos & Cantina Employers denied Marquez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers’ customer service requirements, the Los Panchos Tacos & Cantina

Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. Furthermore, the Los Panchos Tacos & Cantina Employers failed to pay premium wages for days on which they failed to provide Marquez and all of the other Aggrieved Employees with timely meal periods as required by law.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to authorize and permit Marquez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Los Panchos Tacos & Cantina Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free rest breaks. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 10-minute rest breaks when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a rest break if there was no one available to cover for them. In fact, on at least one occasion, the Los Panchos Tacos & Cantina Employers posted a sign that stated, "*DE 6:30pm a 9:30pm NADIEN puede tomar BREAK[.] NADIEN.*" (Translation: "From 6:30pm to 9:30pm NO ONE can take a BREAK[.] NO ONE." Moreoever, the Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees premium wages on workdays the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof as required by law.

At all relevant times, the Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply mobile phones, telecom, and server books to perform their job duties. However, the Los Panchos Tacos & Cantina Employers did not provide these items and did not reimburse Marquez and the other Aggrieved Employees for these items. The Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply mobile phones and pay for mobile phone plans to perform their job duties. Further, the Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply server books to perform their job duties. However, the Los Panchos Tacos & Cantina Employers did not provide these items and did not reimburse Marquez and the other Aggrieved Employees for these items.

The Los Panchos Tacos & Cantina Employers unlawfully deducted wages belonging to Marquez and all of the other Aggrieved Employees.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to issue Marquez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Los Panchos Tacos & Cantina Employers knowingly and intentionally failed to state on the wage statements they issued to Marquez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, and other required information.

The Los Panchos Tacos & Cantina Employers also failed to timely pay Marquez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with storage facilities and resting facilities.

The Los Panchos Tacos & Cantina Employers failed to maintain accurate employee records of Marquez and all of the other Aggrieved Employees.

For the reasons stated herein, Marquez alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Los Panchos Tacos & Cantina Employers failed to authorize and permit Marquez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees at one hour's pay for each day in which the Los Panchos Tacos & Cantina Employers failed to provide them with one or more meal periods as required by law;
- (e) The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees at one hour's pay for each day in which the Los Panchos Tacos & Cantina Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Los Panchos Tacos & Cantina Employers failed to indemnify Marquez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Los Panchos Tacos & Cantina Employers unlawfully deducted wages belonging to Marquez and all of the other Aggrieved Employees;

- (h) The Los Panchos Tacos & Cantina Employers knowingly and intentionally failed to provide Marquez and all of the other Aggrieved Employees with accurate wage statements;
- (i) The Los Panchos Tacos & Cantina Employers willfully failed to timely pay Marquez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Los Panchos Tacos & Cantina Employers and when their employment ended;
- (j) The Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with storage facilities and resting facilities; and
- (k) The Los Panchos Tacos & Cantina Employers failed to maintain accurate employment records pertaining to Marquez and all of the other Aggrieved Employees.

Accordingly, Marquez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Los Panchos Tacos & Cantina Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to mean

any industry, business, or establishment which provides meals, housing, or maintenance services whether operated as a primary business or when incidental to other operations in an establishment not covered by an industry order of the Commission, and includes, but is not limited to the following:

- (1) Restaurants, night clubs, taverns, bars, cocktail lounges, lunch counters, cafeterias, boarding houses, clubs, and all similar establishments where food in either sold or liquid form is prepared and served to be consumed on the premises;

- (2) Catering, banquet, box lunch service, and similar establishments which prepare food for consumption on or off the premises;
- (3) Hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office or loft buildings, and similar establishments offering rental of living, business, or commercial quarters;
- (4) Hospitals, sanitariums, rest homes, child nurseries, child care institutions, homes for the aged, and similar establishments offering board or lodging in addition to medical, surgical, nursing, convalescent, aged, or child care;
- (5) Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities;
- (6) Establishments contracting for development, maintenance or cleaning of grounds; maintenance or cleaning of facilities and/or quarters of commercial units and living units; and
- (7) Establishments providing veterinary or other animal care services.

Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Los Panchos Tacos & Cantina Employers, Marquez, and all of the Aggrieved Employees were covered by the Wage Order because the Los Panchos Tacos & Cantina Employers operated, and Marquez, and all of the Aggrieved Employees, worked for one or more restaurants. Accordingly, Marquez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. Further, the Los Panchos Tacos & Cantina Employers indicated that Marquez and all other Aggrieved Employees took meal periods, even when they did not take meal periods. In addition, the Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to perform work such as cleaning after clocking out at the end of their shifts. Marquez and all other

Aggrieved Employees were not paid for such “off-the-clock” work. Further, the minimum wage in San Diego was \$16.30 throughout Marquez’s employment with the Los Panchos Tacos & Cantina Employers. However, the Los Panchos Tacos & Cantina Employers only paid Marquez and all the other Aggrieved Employees \$15.50 per hour.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes but is not limited to bonuses. *See, e.g., Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§ 778.117, 778.208. *See Oliver v. Mercy Med. Ctr., Inc.* (9th Cir. 1982) 695 F.2d 379. At all relevant times during their work for the Los Panchos Tacos & Cantina Employers, Marquez and all of the other Aggrieved Employees earned rest period premium wages and meal period premium wages during pay periods in which they worked hours qualifying for overtime premium pay rates. However, the Los Panchos Tacos & Cantina Employers failed to pay to Marquez and all of the other Aggrieved Employees rest period premium wages, meal period premium wages, overtime premium pay on such rest period premium wages and meal period premium wages, and other non-discretionary compensation.

At all relevant times during the applicable limitations period, the Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime, wages for all hours they worked at the correct rates of pay. Accordingly, Marquez now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));

3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .
- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with all timely meal periods. The Los Panchos Tacos & Cantina Employers denied Marquez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free meal periods. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 30-minute meal periods when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a meal period if there was no one available to cover for them. When Marquez and the Aggrieved Employees skipped or delayed meal periods, the Los Panchos Tacos & Cantina Employers edited their timesheets to indicate that they had taken a timely meal period. Furthermore, the Los Panchos Tacos & Cantina Employers failed to pay premium wages for days on which they failed to provide Marquez and all of the other Aggrieved Employees with timely meal periods. Accordingly, Marquez now seeks civil penalties for these Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her, and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal

or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Los Panchos Tacos & Cantina Employers failed to authorize and permit Marquez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Los Panchos Tacos & Cantina Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Due to chronic understaffing and Los Panchos Tacos & Cantina Employers' customer service requirements, the Los Panchos Tacos & Cantina Employers denied Marquez and all other Aggrieved Employees their earned duty-free rest breaks. The Los Panchos Tacos & Cantina Employers compelled Marquez and all other Aggrieved Employees to remain in their assigned work areas and available to receive work-related directions. The Los Panchos Tacos & Cantina Employers' managers directed Marquez and all other Aggrieved Employees to delay or forgo 10-minute rest breaks when the restaurant was understaffed. The Los Panchos Tacos & Cantina Employers prohibited Marquez and all other Aggrieved Employees from taking a rest break if there was no one available to cover for them. Moreover, the Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees premium wages on workdays the Los Panchos Tacos & Cantina Employers failed to provide Marquez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Marquez now seeks civil penalties for these Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When 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.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Los Panchos Tacos & Cantina Employers required Marquez

and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Los Panchos Tacos & Cantina Employers required Marquez and all of the other Aggrieved Employees to supply mobile phones, telecom, and server books to perform their job duties. However, the Los Panchos Tacos & Cantina Employers did not provide these items and did not reimburse Marquez and the other Aggrieved Employees for these items. Accordingly, Marquez seeks civil penalties for these Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Unlawful Deductions
(Lab. Code § 221)

Under Labor Code § 221, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” The Los Panchos Tacos & Cantina Employers deducted wages from the wages earned by Marquez and all of the other Aggrieved Employees in violation of Labor Code § 221. Accordingly, Marquez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code § 221, and \$200 for each aggrieved employee for each subsequent violation, or any willful or intentional violation of Labor Code § 221, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code § 225.5).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-

monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Los Panchos Tacos & Cantina Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee, and other requirements of Labor Code section 226. The Los Panchos Tacos & Cantina Employers failed to state in the wage statements they issued

to Marquez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Los Panchos Tacos & Cantina Employers knowingly and intentionally failed to state on the wage statements they issued to Marquez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, all hours worked at each rate of pay, and other required information.

Accordingly, Marquez seeks civil penalties for the Labor Code violations that the Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation, at the intervals stated above. As a result, the Los Panchos Tacos & Cantina Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Marquez now seeks civil penalties for the Labor Code violations that the

Los Panchos Tacos & Cantina Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Los Panchos Tacos & Cantina Employers failed to pay Marquez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with the Los Panchos Tacos & Cantina Employers, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, deducted wages, and other compensation. By failing to pay Marquez and all of the other Aggrieved Employees as set forth above at the end of employment, the Los Panchos Tacos & Cantina Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees,

Marquez seeks civil penalties from the Los Panchos Tacos & Cantina Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Storage Facilities, Lockers, and Resting Facilities
(Lab. Code § 1198)

Section 13 of Wage Order states,

- (A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees' outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

- (B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Los Panchos Tacos & Cantina Employers failed to provide lockers, closets, storage facilities, and resting facilities for use by Marquez and all of the other Aggrieved Employees. If within 33 days of this notice, the Los Panchos Tacos & Cantina Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Marquez, on behalf of herself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Los Panchos Tacos & Cantina Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Los Panchos Tacos & Cantina Employers failed to compensate Marquez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all overtime wages earned, all meal period premium wages earned, all rest break premium wages earned, all unlawfully deducted wages, gross wages earned, all hours worked at each rate of pay, and related compensation. As a result, the Los Panchos Tacos & Cantina Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Marquez's and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Marquez seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Person Acting on Behalf of Employers who Violates Labor Code
(Labor Code § 558.1)

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer,

who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Luis Diaz was an employer of Marquez and all of the other Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of the Los Panchos Tacos & Cantina Employers and the other employers identified above. Luis Diaz directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above. On behalf of herself and all of the other Aggrieved Employees, Marquez seeks the same civil penalties against Luis Diaz on the same grounds for which she seeks civil penalties against the Los Panchos Tacos & Cantina Employers.

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LWDA / The Los Panchos Tacos & Cantina Employers
Re: Anika Marquez
May 7, 2024
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Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Anika Marquez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
Lauren Davis, Esq.
David@spivaklaw.com
Lauren@spivaklaw.com

cc: Anika Marquez
Walter L. Haines, Esq.

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c/o Agent for Service of Process
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Luis Diaz
c/o Agent for Service of Process - Team Los Panchos, Inc
Anna Herrera
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Luis Diaz
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Santa Ana, CA 92705

LWDA / The Los Panchos Tacos & Cantina Employers

Re: Anika Marquez

May 7, 2024

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Luis Diaz

441 Washington St

San Diego, CA 92103

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East 25th Fl Los Angeles CA 90067.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On July 11, 2024, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Luis Diaz
441 Washington St
San Diego, CA 92103

Luis Diaz
c/o Agent for Service of Process - Team Los Panchos, Inc
Anna Herrera
441 Washington St
San Diego, CA 92103

Team Los Panchos, Inc
c/o Agent for Service of Process
Anna Herrera
441 Washington St
San Diego, CA 92103

XXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 1801 Century Park East 25th Fl Los Angeles CA 90067.

EXECUTED on July 11, 2024, at Fresno, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



NAZIE ELENA BAHARLOO



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