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Attorneys for Plaintiff Adela Hurtado

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

ADELA HURTADO, individually and on behalf of all similarly situated employees of Defendants in the State of California,

Plaintiff,

v.

GIUSEPPE'S CUCINA LLC, a Limited Liability Company; and DOES 1 THROUGH 50, inclusive,

Defendants.

Case No.: 24CV-0735

Unlimited Civil
Amount Demanded exceeds $35,000.00

REPRESENTATIVE ACTION FOR CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code § 2698 *et seq.*)

Plaintiff Adela Hurtado ("Plaintiff") brings this representative enforcement action in her representative capacity only against Defendant Giuseppe's Cucina LLC (a limited liability company), and DOES 1 through 50, inclusive (collectively, "Giuseppe's" or "Defendants"), on the following grounds:

I. INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code § 2698 *et seq.*, "PAGA") solely as the proxy or agent of the state of California and on behalf of all current or former non-exempt employees of Defendants who worked in California during the relevant time period and who suffered at least one of the California Labor Code violations alleged herein (referred to herein as "Aggrieved Employees").

2. While Plaintiff has personally experienced the alleged violations described herein, Plaintiff does not allege individual claims, nor does she bring claims in her individual capacity. Plaintiff seeks only those civil penalties permitted under PAGA to be recovered by an Aggrieved Employee acting on behalf of the state of California. Plaintiff does not seek any compensation for damages or actual losses incurred through this action.

3. Plaintiff alleges that during the relevant time period, Defendants engaged in several wage and hour violations under the California Labor Code ("Labor Code") and the applicable California Industrial Welfare Commission's ("IWC") Wage Order by, among other things:

a. Failing to timely pay all minimum, regular, and/or overtime wages;
b. Failing to provide legally compliant meal periods and/or timely pay premium wages in lieu thereof;
c. Failing to provide legally compliant rest periods and/or timely pay premium wages in lieu thereof;
d. Failing to indemnify necessary business expenditures incurred;
e. Failing to timely pay all wages due during and owing upon separation of employment and/or the required waiting time penalties;
f. Failing to furnish accurate itemized wage statements; and
g. Failing to maintain accurate records.

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4. By and through this representative enforcement action, and solely in her representative capacity, Plaintiff seeks to recover all available remedies, including, but not limited to, all applicable civil penalties, reasonable attorneys' fees, and litigation costs on behalf of all Aggrieved Employees, the general public, and the state of California.

5. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and formal discovery.

II. <u>JURISDICTION AND VENUE</u>

6. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") § 410.10 and Labor Code § 2698 *et seq*. Pursuant to § 2698 *et seq.*, Plaintiff brings this action, in her representative capacity, on behalf of all Aggrieved Employees.

7. This Court has personal jurisdiction over Defendants because Defendants conduct business in the state of California and have caused injuries in the county of San Luis Obispo, as well as throughout the state of California, through their acts, omissions, and violations of the Labor Code and relevant IWC Wage Order.

8. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Defendants transact business in the county of San Luis Obispo and are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all Aggrieved Employees within the county of San Luis Obispo and throughout the state of California.

III. <u>THE PARTIES</u>

A. <u>PLAINTIFF</u>

9. Plaintiff Adela Hurtado at all material times mentioned herein:

a. Suffered each and every one of the alleged Labor Code violations and is an "Aggrieved Employee" within the meaning of Labor Code § 2699(c); and

b. Complied with all requirements outlined in Labor Code § 2698 *et seq*. prior to the filing of this enforcement PAGA action.

B. DEFENDANTS

10. Defendant Giuseppes Cucina, LLC., is a corporation organized and existing under the laws of the state of California, with its principal place of business in San Luis Obispo, California.

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendants Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

12. At all times mentioned herein, the acts alleged to have been done and/or caused by each named defendant is also alleged to have been done and/or caused by each of the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

13. At all times mentioned herein, each defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants.

14. At all times mentioned herein, each defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

15. At all times mentioned herein, the acts and/or omissions of each of the defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

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16. At all times mentioned herein there was a unity of interest and ownership between each defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all Aggrieved Employees.

17. At all times mentioned herein, each defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

18. At all times mentioned herein, each defendant, including each fictitiously named defendant, caused Aggrieved Employees, including Plaintiff, to work and/or prevented Plaintiff and Aggrieved Employees from working.

19. At all times mentioned herein, each defendant, including each fictitiously named defendant, had control over Aggrieved Employees.

20. Each defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

21. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

IV. FACTUAL BACKGROUND

22. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

23. Plaintiff was employed by, or otherwise performed work for Defendants beginning in 2015. Plaintiff was a non-exempt employee at Defendants' restaurants located in Pismo Beach and San Luis Obispo, California.

24. Plaintiff typically worked nine-hour to ten-hour shifts, six days per week. During busy seasons Plaintiff regularly worked shifts beyond 10 hours. Plaintiff's shift typically began at 7:00 a.m. and ended around 4:30 p.m. at the earliest.

25. Although her assigned tasks changed over the years, most recently, Plaintiff worked for Defendants as a cook. Her assigned tasks included making pasta and pizza to serve in the restaurants.

26. Plaintiff resigned employment around May 31, 2024.

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27. At all relevant times, Plaintiff was classified as a non-exempt employee, earned an hourly wage, and was paid on a bi-weekly basis.

28. Plaintiff asserts Defendants have employed, and will continue to employ, Aggrieved Employees throughout the state of California. Plaintiff alleges that Aggrieved Employees are categorized as non-exempt, paid an hourly wage, and are paid on a bi-weekly basis.

29. Plaintiff contends she and all other Aggrieved Employees were subject to, and continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein.

30. Plaintiff further alleges that she and all other Aggrieved Employees have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

31. Plaintiff alleges Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, and/or overtime wages during employment.

32. Specifically, Plaintiff and other Aggrieved Employees were not compensated for work performed during their "meal periods." In other words, Plaintiff and other Aggrieved Employees were required to clock out for their meal breaks and continue working, without providing remuneration for these hours worked.

33. Plaintiff further asserts she and, on information and belief, other Aggrieved Employees were not paid overtime wages despite working in excess of eight hours per day and/or forty hours per week. For example, at all relevant times Defendants had a policy, practice, procedure, and or guideline by which it would compensate employees at the regular or straight time basis of pay for hours which should have been paid at the applicable overtime rate.

34. Plaintiff alleges that during the relevant time period, Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to provide Plaintiff and other Aggrieved Employees with the opportunity to take thirty-minute, off-duty, uninterrupted meal periods before the end of their fifth hour of work when they worked five or more hours in a day. For example, Plaintiff and, on information and belief, other Aggrieved Employees were required to clock out but continue working through their meal breaks, or otherwise have their meal breaks interrupted by work duties. Plaintiff never

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signed an on-duty meal period agreement, nor did she sign a meal period waiver.

35. Although Plaintiff and, on information and belief, other Aggrieved Employees did not receive legally compliant meal periods, Plaintiff and Aggrieved Employees did not receive premium wages equivalent to an additional one hour of pay at their regular rate of pay for each day they were not provided compliant meal periods.

36. Plaintiff further contends Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of not authorizing and permitting Plaintiff and other Aggrieved Employees with the opportunity to take an off-duty, uninterrupted, ten-minute rest period for every four hours worked or major fraction thereof. Specifically, Plaintiff alleges that Aggrieved Employees, including herself, were unable to take rest periods due to workload demands and being understaffed.

37. Plaintiff asserts, she never received rest periods due to her workload and having no one available to relieve her. As a result, Plaintiff and other Aggrieved Employees either did not receive rest periods, or on the occasion they did, she was not free from Defendants control, interrupted by work duties, and/or were less than ten minutes in length. Thus, Plaintiff contends she and, on information and belief, other Aggrieved Employees were not provided with legally compliant rest periods.

38. Despite not being provided with legally compliant rest periods, Plaintiff and Aggrieved Employees did not receive premium wages equivalent to an additional one hour of pay at their regular rate of pay for each day they were not provided compliant rest periods.

39. Plaintiff alleges Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to reimburse employees for all necessary expenses incurred in the discharge of their job duties. For example, Plaintiff and other Aggrieved Employees were required to use their own personal cell phones to perform work duties. Defendants required Plaintiff to share her personal cell phone number, which they would regularly use to contact her during the workday regarding food prep work needed for the Defendants' various locations.

40. Plaintiff alleges Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties. To date, Plaintiff has not received final wages owed to her by Defendants, nor the required waiting time penalties. Based on information and belief, Plaintiff contends

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that other former employees were also not timely paid all wages due and owing upon separation of employment and/or the required waiting time penalties.

41. Plaintiff alleges Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to maintain a safe and healthful place of employment. Floors and stairs used by employees at Defendants restaurants are frequently coated with various slippery substances. Defendants prioritize production over safety and tells employees to ignore dangerous conditions and continue working, causing Plaintiff and Aggrieved Employees to slip and fall, or risk a slip and fall. Further, Aggrieved Employees are not provided with the proper safety equipment to prevent cuts and burns while preparing food. As a result, Defendants required its employees, including Plaintiff, to work in a place of employment that is not safe and healthful in violation of California law

42. Plaintiff alleges that Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to furnish Plaintiff, and, on information and belief, other Aggrieved Employees with accurate, itemized wage statements.

43. As a result of the foregoing illegal policies and practices, Defendants did not furnish Plaintiff and, on information and belief, other Aggrieved Employees with itemized wage statements that accurately reflected the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned.

44. Due to Defendants' failure to furnish accurate, itemized wage statements, Plaintiff and other Aggrieved Employees were unable to promptly and easily determine, for example, the gross and net wages earned during the pay period and the total hours worked during each pay period.

45. Plaintiff alleges Defendants had, and continue to have, a policy, practice, procedure, guideline, and/or culture of failing to maintain accurate employment records. The illegal policies and practices, such as those described herein including Defendants' failure to accurately record all hours worked by its employees, have resulted in Defendants' failure to maintain accurate records reflecting Plaintiff's and other Aggrieved Employees' actual time worked and actual wages earned and paid, among other things, in violation of California law.

46. On July 18, 2024, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants as required by statute. The letter outlined each of the Labor Code violations alleged herein. A true and correct copy of the July 18, 2024, written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

47. To date, more than 65 days after submission of Plaintiff's written notice, the LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.

48. Plaintiff believes additional violations may be discovered and therefore reserves her right to allege additional violations of the law as warranted by investigation and discovery. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

V. PAGA DESIGNATION

49. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above, as though fully set forth herein.

50. By and through this representative action, Plaintiff intends to represent the following aggrieved employees:

> All current or former non-exempt employees of Defendants who performed work in California and who suffered at least one of the California Labor Code violations alleged herein during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the "PAGA Period").

51. Aggrieved Employees are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

52. A more precise definition of the Aggrieved Employees may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the group of Aggrieved Employees as permitted by California law.

53. Pursuant to Labor Code § 2698 *et seq*., any provision of the Labor Code providing for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

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54. Under Labor Code § 2699, civil penalties recovered by aggrieved employees shall be distributed as follows: sixty-five percent (65%) to the LWDA and thirty-five percent (35%) to the aggrieved employees.

55. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of her claims with the LWDA, Defendants were Plaintiff's and all other Aggrieved Employees employer or person acting on behalf of Aggrieved Employees employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor Code § 203.

56. Plaintiff has standing as an "aggrieved employee" under the PAGA because she was employed by the alleged violator, Defendants, and personally suffered each and every one of the violations alleged during the PAGA period. Therefore, Plaintiff is properly suited to represent the interests of all other Aggrieved Employees.

57. Plaintiff alleges all other Aggrieved Employees are also "aggrieved employees" under PAGA as Defendants employed them and all Aggrieved Employees experienced one or more of the alleged violations outlined herein.

58. Pursuant to Labor Code § 2698 *et seq*., Plaintiff has exhausted her administrative remedies. Plaintiff complied with the notice requirements outlined in Labor Code § 2699.3. On July 18, 2024, Plaintiff submitted written notice to the LWDA and Defendants informing them of the Defendants' alleged Labor Code violations pursuant to PAGA. (**Exh. 1**.) Pursuant to PAGA, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff therefore has the right to pursue, and does pursue, the asserted claims under PAGA in a representative capacity pursuant to Labor Code § 2698 *et seq*.

59. As set forth herein, Defendants have committed, and continue to commit, numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in her representative capacity, to recover, on behalf of all Aggrieved Employees, the state of California, and the

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general public, civil penalties as well as attorneys' fees and costs from Defendants for the alleged violations, described herein.

60. Regarding all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226.7, 1198, 2802, and violations of IWC Wage Orders, Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per aggrieved employee for the initial violation, and $200 for each aggrieved employee per pay period if either of the following are met: (1) Within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful; and (2) the court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

61. For violations of paragraphs (1) to (7), inclusive, or paragraph (9) of Labor Code § 226(a), Labor Code §2699(f) imposes a civil penalty of $25 for each aggrieved employee per pay period if the employee can promptly and easily determine from the wage statement alone the accurate information specified by section 226(a). For violations of paragraph (8) of Labor Code § 226(a), Labor Code § 2699(f) imposes a civil penalty of $25 per each aggrieved employee per pay period "if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer."

62. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, in her Representative Capacity, against Defendants and Does 1 through 50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 *et seq*.]

63. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

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64. Plaintiff, in her representative capacity on behalf all Aggrieved Employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

a. Failing to timely pay all minimum, regular, and overtime wages during employment in violation of Labor Code §§ 204, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order;

b. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment in violation of Labor Code §§ 226.7, 512, 558, 1198 and the "Meal Periods" section of the applicable IWC Wage Order;

c. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment in violation of Labor Code §§ 226.7, 1198 and the "Rest Periods" section of the applicable IWC Wage Order;

d. Failing to indemnify business expenditures in violation of Labor Code § 2802;

e. Failing to timely pay all wages due during and upon separation of employment and/or the required waiting time penalties in violation of Labor Code §§ 201-204;

f. Failing to furnish accurate, itemized wage statements in violation of Labor Code §§ 226, 226.3, and the "Records" section of the applicable IWC Wage Order;

g. Failing to maintain accurate employment, time, and/or payroll records in violation of Labor Code § 1174 and the "Records" section of the applicable IWC Wage Order; and

h. Failing to maintain a safe and healthful place of employment in violation of Labor Code § 6400 *et seq.*

65. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code § 204 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation $200 for each failure to pay each employee.

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66. Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 210 for Defendants' violations of Labor Code § 204.

67. For violations of Labor Code § 226(a), resulting from an employer's failure to provide employees with accurate wage statements or failure to keep records, Labor Code § 226.3 imposes a civil penalty of $250 per employee per violation for an initial citation and $1,000 per employee for each violation in a subsequent citation.

68. Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 226.3.

69. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of $50 per pay period for each underpaid employee for each initial violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC.

70. Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 558.

71. Labor Code § 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d). Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by § 1174.5.

72. Labor Code § 1197.1 imposes a civil penalty of $100 for each underpaid employee for each pay period for which the employee is underpaid for paying or causing an employee to be paid a wage less than the minimum wage. The civil penalties provided for in section 1197.1 are in addition to any other penalty provided by law. Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 1197.1.

73. For all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 226.7, 1194, 1197, 1198, and 2802, Labor Code § 2699(f) imposes a civil penalty of $100 per pay period, per aggrieved employee for the initial

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violation, and $200 for each aggrieved employee per pay period if either of the following are met: (1) Within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful; and (2) the court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

74. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

75. Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

76. Plaintiff, in her representative capacity on behalf of all Aggrieved Employees, requests further relief as described in the below prayer for relief.

VII. PRAYER FOR RELIEF

Plaintiff, in her representative capacity only, prays for judgment against Defendants and in favor of the state of California and all Aggrieved Employees as follows:

a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f), and/or other applicable law;

b. For an order determining that Defendants must pay a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);

c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 218.5, 226(e), 1194, and 2699(g)(1), Code of Civil Procedure § 1021.5, and the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory and/or other applicable law; and

d. For any and all other relief as this Court deems proper and just and is available under Labor Code § 2698 *et seq*.

Respectfully submitted,

Dated: November 25, 2024

GRAHAM**HOLLIS** APC

By: ______________________

Graham S.P. Hollis
Vilmarie Cordero
Ommar Chavez
Attorneys for Plaintiff Adela Hurtado

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EXHIBIT 1

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July 18, 2024

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

California Division of Occupational Health and Safety
1515 Clay Street, Suite 1901
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Giuseppe's Cucina LLC
891 Price Street
Pismo Beach, CA 93449

Re: Adela Hurtado's Wage and Hour Claims Against Giuseppe's Cucina, LLC

Dear California Labor and Workforce Development Agency and Giuseppe's Cucina:

Please be advised that Adela Hurtado ("Claimant") has retained our firm, GrahamHollis APC, to represent her for claims against her former employer Giuseppe's Cucina LLC ("the Company").

This letter shall serve as Claimant's written notice to the Labor and Workforce Development Agency ("LWDA") and the Company of the alleged Labor Code violations Claimant claims the Company committed against her and all other non-exempt employees of the Company in California that suffered at least one of the alleged Labor Code violations during their employment. Claimant provides this notice, which includes the facts and legal theories to support the Labor Code violations alleged herein, in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2699.3. Claimant intends to file a civil enforcement action on behalf of the Labor Commissioner and to recover all available civil penalties.

Pursuant to Labor Code section 2699(a), and by way of this letter, Claimant intends to represent all other current and former non-exempt employees who performed work for the Company in California and who have suffered at least one of the wage and hour violations described herein during the relevant period (the "Aggrieved

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Allison Schubert
Alex Kuner
Dawn M. Berry
Taylor M. Gee
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Employees").

FACTUAL BACKGROUND

Giuseppe's Cucina, LLC is a California limited liability company with restaurants specialized in serving Italian and Italian style food. Giuseppe's Cucina, LLC's principal place of business is in Pismo Beach, California. Giuseppe's Cucina, LLC has two full-service restaurant locations—one in San Luis Obispo, and one in Pismo Beach—and a third "express" location near its Pismo Beach location.

Claimant began working with the Company in 2015 as a dishwasher at its San Luis Obispo Location then-named "Pizza Republic." In about February 2016, Claimant was moved to the Pismo Beach location—Giuseppe's Cucina Italiana. Claimant typically worked nine-hour to ten-hour shifts, six days per week. However, during busy season Claimant regularly worked shifts beyond 10 hours. Claimant's shift began at 7:00 a.m. and ended around 4:30 p.m. at the earliest. Claimant was a non-exempt hourly employee and was most recently paid an hourly wage of $22.50 per hour on a bi-weekly basis. Although her assigned tasks have changed over the years, most recently, Claimant worked at the Company as a cook whose job tasks included making pasta and pizza to serve in the restaurant. Claimant resigned from her position with the Company on May 31, 2024.

At all relevant times, the Company denied Claimant and other Aggrieved Employees the specific rights afforded to them under Labor Code and the applicable IWC Wage Order. Specifically, the Company failed to timely pay all minimum, regular, and overtime wages; failed to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failed to timely pay all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed to furnish accurate itemized wage statements; failed to maintain accurate employment records; failed to reimburse for all business expenses; and failed to provide a safe and healthful place of employment.

Claimant contends the Company failed to timely pay Aggrieved Employees, including herself, all minimum, regular, and overtime wages for all time actually worked or spent under the control of the Company. At all relevant times, the Company has a policy, practice, procedure and/or guideline requiring employees to work off-the-clock. For example, the Company required Claimant and other Aggrieved Employees, to clock out for their meal breaks and continue working, without providing remuneration for these hours worked. As a result, the Company did not properly compensate Claimant and, on information and belief, other Aggrieved Employees, all minimum, regular, and overtime hours for all time during which they are subject to the control of the Company, in violation of California law.

Independent of and in addition to the Company's illegal policy, practice, procedure, and/or guideline mentioned above, the Company also failed to properly compensate Aggrieved Employees, including Claimant, for all overtime hours worked. For example, at all relevant times the Company had a policy, practice, procedure, and or guideline by which it would compensate employees at the regular or straight time basis of pay for hours which should have been paid at the applicable overtime rate.

Claimant alleges the Company did not provide her and other Aggrieved Employees with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that were free from the employer's control. As set forth above, the Company maintains a policy that unlawfully requires Claimant and other

Aggrieved Employees to work during their meal breaks. Even when employees were allowed to take a meal break, they were often interrupted by supervisors demanding they return to work. Claimant further alleges that the Company does not provide her and other Aggrieved Employees with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than 10 hours in a day. For example, Claimant and other Aggrieved employees frequently work shifts in excess of 10 hours during the busy summer months, but the Company did not provide a second meal break for these shifts.

Claimant further asserts she and, on information and belief, other Aggrieved Employees did not sign a valid on-duty meal period agreement at any point during their employment, nor did they properly waive any of their meal periods.

Claimant also alleges she and other Aggrieved Employees were not authorized or permitted by the Company to take an off-duty, uninterrupted, 10-minute rest period for every four hours worked or major fraction thereof. Rather, the Company requires Aggrieved Employees, including Claimant, to work through the day without a rest period. Thus, Claimant contends she and other Aggrieved Employees were not provided with legally compliant rest breaks.

Although Claimant and other Aggrieved Employees did not receive legally compliant meal and/or rest periods, Claimant and other Aggrieved Employees did not receive premium wages equivalent to an additional hour of pay at their regular rate of pay for each day they were not provided compliant meal and/or rest periods.

Claimant also alleges the wage statements furnished by the Company to Claimant and other Aggrieved Employees did not reflect the correct total hours worked by the employees, the correct amount of gross and/or net wages earned, all applicable hourly rates and the corresponding number of hours worked at each hourly rate, among other things, as required by the Labor Code. For example, Claimant's wage statements do not reflect the off-the-clock work performed during her meal periods, and often reflected "regular" hours which should have been paid at the "overtime" rate.

As a direct result of the Company's illegal policies, practices, procedures, and/or guidelines, like those described herein, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employee's actual time worked, the beginning and end of each meal period, and actual wages earned and paid, among other things, in violation of California law.

Claimant asserts that the Company had, and continues to have, a policy, practice, procedure and/or guideline of failing to maintain a safe and healthful place of employment. Due to the nature of the job, the floors and stairs used by employees are frequently coated with various slippery substances. Claimant alleges the Company prioritizes production over safety and tells employees to ignore dangerous conditions such as this, and continue working, causing Aggrieved Employees to slip and fall, or risk a slip and fall. Further, Aggrieved Employees are not provided with the proper safety equipment to prevent cuts and burns while preparing food. As a result, the Company required its employees, including Claimant, to work in a place of employment that is not safe and healthful in violation of California law.

Claimant further alleges, based on information and belief, that the Company has a policy, practice, procedure, and/or guideline of failing to timely pay former Aggrieved Employees all wages due and owing upon separation of employment, including minimum, regular, and overtime wages for all hours worked, as well as meal and rest premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, based on information and belief, that former Aggrieved Employees have not been paid any waiting time penalties for the late payment of wages, as required by California law. For example, Plaintiff resigned from the Company on May 31, 2024. To this day, Plaintiff has not received all wages due and waiting time penalties.

The Company also failed to reimburse Claimant and, on information and belief, other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties. For example, Claimant and other Aggrieved Employees were required to use their own personal cell phones to perform work duties. The Company required Claimant to share her personal cell phone number, which they would regularly use to contact her during the workday regarding food prep work she was to perform for the Company's various locations. Claimant, and other aggrieved employees, did not receive any reimbursement for the expense incurred in responding to phone calls on personal cell phones.

All facts, claims, and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts, claims, and/or legal theories contained in this written notice are based on the information available at the time of this writing. Because Claimant's investigation is ongoing, Claimant does not possess all relevant information at the time of this writing. Claimant therefore reserves the right to revise these facts and/or add any new claims or legal theories by amending this written notice and/or by adding facts, claims, and/or legal theories to her civil complaint should additional new relevant information arise.

FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198)

Labor Code Section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code Section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. Labor Code § 204(b)(1).

Labor Code Section 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." *See Gonzalez v. Downtown LA Motors, LP* 215 Cal. App. 4th 36, 44 (2013) (providing an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise.").

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." 8 Cal. Code Regs. § 11010, subd. 2(G); *see also Clark v. QG Printing II, LLC*, No. 118CV00899AWIEPG (E.D. Cal. Sept. 18, 2020) 2020 WL 5604290, at *18) (finding off-the-clock work where the company maintained a policy that required employees to arrive early and watch a scrolling monitor prior to clocking in.)

Labor Code Section 1197.1 provides:

> Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code Section 510(a), which codifies an employee’s right to overtime compensation, provides:

> 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 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.

Under California law, an employee may not waive his or his right to overtime compensation. *Early v. Superior Court,* 79 Cal. App. 4th 1420, 1430 (2000).

Labor Code Section 1194(a) provides:

> 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.

Labor Code Section 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code Section 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.

Labor Code Section 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code Section 558 provides that, "any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty" of $50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and $100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company failed to timely pay all minimum, regular, and/or overtime, wages to Claimant and other Aggrieved Employees for all time engaged in work on behalf of the Company. Specifically, the Company failed to pay for hours worked while "off-the-clock," including time spent working though or during meal breaks. Additionally, the Company failed to timely pay all overtime wages to Claimant and other Aggrieved Employees for off-the-clock work in excess of eight hours per day and/or 40 hours per week. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PROVIDE MEAL PERIODS AND/OR TIMELY PAY PREMIUM WAGES
(Labor Code §§ 204, 226.7, 512)

Labor Code Section 512(a) provides:

> 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. (Emphasis added.)

A meal period generally complies with the requirements of California law if the employee has at least 30-minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1036 (2012). California law further prohibits employers from "...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks." *Id*. at 1040 [internal citations omitted]; *see also Kaanaana v. Barrett Bus. Servs., Inc.* 29 Cal. App. 5th 778, 785 (2018), aff'd, 11 Cal. 5th 158 (2021) (concluding the company's formal policy was undermined when the company maintained a practice that required belt sorters to return to their stations three to five minutes before the end of their 30-minute meal break).

Pursuant to Labor Code Section 226.7:

> 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.

Labor Code Section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code Section 226.7 are wages that are due payable in accordance with the Labor Code Section 204. *Murphy v. Kenneth Cole Productions, Inc.* 40 Cal. 4th 1094, 1103-1114 (2007).

As set forth above, the Company failed to provide Claimant and other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth hour of work and/or a second off-duty 30-minute meal period when they worked in excess of 10 hours in a workday. Consequently, Claimant and Aggrieved Employees are entitled to receive one hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violation of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND/OR TIMELY PAY PREMIUM WAGES

(Labor Code §§ 204, 226.7)

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. *Augustus v. ABM Security Services, Inc*., 2 Cal. 5th 267, 269 (2016).

Labor Code Section 226.7 provides, in pertinent part:

> (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 workday that the meal or rest or recovery period is not provided.

Labor Code Section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code Section 226.7 are wages that are due payable in accordance with the Labor Code Section 204. *Murphy, supra,* 40 Cal. 4th at pp. 1103-1114.

The Company failed to authorize and permit Aggrieved Employees, including Claimant, to take off-duty, uninterrupted 10-minute rest periods for every four hours worked or major fraction thereof. Moreover, the Company failed to provide a third 10-minute rest period on days when Claimant and other Aggrieved Employees worked over 10 hours. Therefore, Claimant and other Aggrieved Employees are entitled to receive one hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violation of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO INDEMNIFY ALL NECESSARY EXPENDITURES
(Labor Code § 2802)

Labor Code Section 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code Section 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that they receive interest on the applicable amount.

Furthermore, Labor Code Section 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth, the Company required Claimant and other Aggrieved Employees to use personal cell phones in the discharge of their duties. Nevertheless, the Company failed to indemnify Claimant and Aggrieved Employees for the necessary business expenses they incurred. Claimant will pursue all available remedies for the Company's violations on behalf of herself and all other Aggrieved Employees to the extent allowed by law.

FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES
(Labor Code §§ 201, 202, and 203)

Labor Code Section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code Section 202 provides, in pertinent part:

> If an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.

Labor Code Section 203(a) further states:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any 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 therefore is commenced; but the wages shall not continue for more than 30 days.

Meal and rest period premiums constitute wages due and owing and thus must be factored into potential waiting time penalties. *See Naranjo v. Spectrum Sec. Serv., Inc.*, 13 Cal. 5th 93, 105 (2022).

As discussed herein, the Company did not timely pay Claimant and former Aggrieved Employees all minimum, regular, and/or overtime wages, as well as meal and/or rest period premium wages, within the required time upon separation of employment. The Company also did not pay Claimant and, on information and belief, former Aggrieved Employees, the required waiting time penalties for the late payment of wages due upon separation of employment. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of all Aggrieved Employees to the extent permitted by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226, 226.3)

Labor Code Section 226(a) states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or his employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (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 only the last four digits of his or his social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, ... and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee.

Meal and rest period premiums must also be included on an employee's itemized wage statement. *Naranjo v. Spectrum Sec. Serv., Inc., supra,* 13 Cal. 5th at 93.

Labor Code Section 226(e)(1) provides:

> An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

Labor Code Section 226(h) further states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code Section 226.3 imposes an additional civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code Section 226(a).

As set forth above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, accurately reflect their total hours worked, the correct corresponding number of hours worked at each hourly rate, and the net wages earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Labor Code §§ 226, 1174, 1174.5)

Labor Code Section 1174(c) requires every employer to "keep a record showing the names and addresses of all employees employed..."

Labor Code Section 1174(d) further requires every person employing labor in California to:

> [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. 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 is further obligated under Labor Code Section 226(b) to keep the information required by Labor Code Section 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

Labor Code Section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code Section 1174(d).

Labor Code Section 226(e)(1) provides:

> An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked including, but not limited to, the Company's failure to record meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

<u>FAILURE TO MAINTAIN A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT</u>
(Labor Code § 6400 et seq.)

Labor Code Sections 6400 and 6404 establish the obligation of an employer to furnish its employees with a place of employment that is safe and healthful. Labor Code Section 6401 provides:

> Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

See also Labor Code § 6403 (prohibiting an employer from failing or neglecting to perform its obligations under Labor Code § 6401).

An employer is required to correct any unsafe and/or unhealthy condition in a timely manner and is further prohibited from permitting or requiring an employee to go or be in a place of employment that is not safe and healthful. Labor Code §§ 6401.7(b) and 6402.

For violations of Labor Code § 6400 et seq., Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in Section 6423, which states the following:

> Every employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]knowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . . [i]s punishable by . . . a fine not to exceed five thousand dollars ($5,000).

Furthermore, employers that repeatedly violate "any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees" are subject to "a fine not exceeding fifteen thousand dollars ($15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars ($150,000)." Labor Code § 6423(d).

Claimant alleges that the Company failed to maintain a safe and healthful place of employment for Claimant and Aggrieved Employees. For instance, Claimant contends that the Company did not prevent or remediate slippery conditions on stairs heavily used by employees to retrieve food and ingredients, which resulted in employees slipping and falling. Claimant further alleges that the Company did not furnish adequate safety equipment to prevent and mitigate cuts and burns. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of herself and all Aggrieved Employees to the extent allowed by law.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE
(Labor Code §§ 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f))

Labor Code Section 210 provides that any person who fails to pay wages as provided in Labor Code Section 204 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, $200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty.

Labor Code Section 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1 (Labor Code §§ 500-558), or any provision regulating the hours and days of work in any IWC Wage Order, to a civil penalty as follows: "[f]or any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid."

Labor Code Section 558.1(a) further states that,

> [a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage 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.

Pursuant to Labor Code Section 558.1(b), Labor Code Section 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code Section 1174 subdivisions (b), (c), and (d), Labor Code Section 1174.5 imposes a civil penalty of $500.

Similarly, Labor Code Section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

> (1) For any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to §

> 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code Section 558.1(a) further states "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage 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." This includes the owners, officers, directors, or managing agents of the employer. Labor Code §558.1(b).

Labor Code Section 2699(f) imposes a civil penalty of $100 per pay period, per aggrieved employee for violations of certain Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code Sections 201, 202, 203, 226.7, 1198, 2802, and relevant IWC Wage Orders. If the alleged violation results from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods, the civil penalty is $50 for each aggrieved employee per pay period.

Moreover, Labor Code Section 2699(f) imposes a civil penalty of $200 per pay period, per aggrieved employee if either of the following are met: (1) within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful; or (2) the court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

For violations of paragraphs (1) to (7), inclusive, or paragraph (9) of Labor Code Section 226(a), Labor Code Section 2699(f) imposes a civil penalty of $25 for each aggrieved employee per pay period if the employee can promptly and easily determine from the wage statement alone the accurate information specified by section 226(a).

For violations of paragraph (8) of Labor Code Section 226(a), Labor Code Section 2699(f) imposes a civil penalty of $25 per each aggrieved employee per pay period "if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer."

For violations of Labor Code Section 226(a) resulting from an employer's failure to provide employees with a wage deduction statement or failure to keep records required by this section, Labor Code Section 226.3 imposes a civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation

As set forth above, the Company violated the Labor Code by, among other things, failing to timely pay all minimum, regular, and/or overtime -wages; failing to provide legally compliant meal and/or rest periods and/or timely pay premium wages; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to furnish accurate itemized wage statements; failing to maintain accurate records; failing to provide a safe and healthful workplace; and failing to properly reimburse employees for necessary business expenses. As a result, the Company is liable for civil penalties under Labor Code Sections 210, 226.3, 558, 558.1, 1174.5, 1197.1, and 2699(f). Claimant will pursue all available remedies including, but not limited to those stated herein, for the Company's violations on behalf of herself and all Aggrieved Employees to the extent allowed by law.

ATTORNEYS FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES
(Labor Code §§ 210, 218.5, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq*.)

Labor Code Sections 210, 218.5, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, and 2698, *et seq*., among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

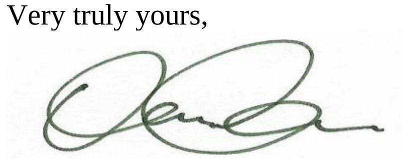
Pursuant to Labor Code Section 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code Section 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by PAGA, on behalf of herself and all Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other Aggrieved Employees, as permitted by the PAGA.

Very truly yours,



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