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August 13, 2024

VIA ONLINE SUBMISSION

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

Subject: *Daniela Hernandez-Ayala v. CEC Entertainment, LLC, et al.*

Dear PAGA Administrator:

This office represents Daniela Hernandez-Ayala in connection with her claims under the California Labor Code. Ms. Hernandez-Ayala was an employee of CEC ENTERTAINMENT, LLC and/or CEC ENTERTAINMENT, INC. For the purpose of this letter, Ms. Hernandez-Ayala collectively refers to these entities as "CEC."

The employers may be contacted directly at the addresses below:

CEC ENTERTAINMENT, LLC
1707 MARKET PL BLVD STE 200
IRVING, TX 75063

CEC ENTERTAINMENT, INC.
1707 MARKET PL BLVD STE 200
IRVING, TX 75063

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

CEC employed Ms. Hernandez-Ayala as an hourly paid, non-exempt Cast Member and Assistant Manager from approximately November 2017 to March 2024. Ms. Hernandez-Ayala worked for CEC at its restaurant located in Fontana, California. During her employment, Ms. Hernandez-Ayala typically worked eight (8) or more hours per day and five (5) days per week. At the time her employment ended, Ms. Hernandez-Ayala was compensated approximately $19.50 per hour. Her primary job duties included, without limitation, maintaining guest relations, cleaning, planning events, conducting inventory, securing deposits, and preparing food.

CEC committed each of the following Labor Code violations against Ms. Hernandez-Ayala, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

<u>CEC's Company-Wide and Uniform Payroll and HR Practices</u>

CEC ENTERTAINMENT, LLC is a Texas limited liability company, and CEC ENTERTAINMENT, INC. is a Kansas corporation. Together, they own and operate approximately 72 "Chuck E. Cheese" or "Peter Piper Pizza" restaurant locations in California. Upon information and belief, CEC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irving, Texas, for all non-exempt, hourly paid employees working for CEC in California, including Ms. Hernandez-Ayala and other aggrieved employees. At all relevant times, CEC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Hernandez-Ayala and other aggrieved employees, regardless of their location or position.

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

<u>Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime</u>

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

CEC willfully failed to pay all overtime wages owed to Ms. Hernandez-Ayala and other aggrieved employees. During the relevant time period, Ms. Hernandez-Ayala and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a

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

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

First, during the relevant time period, CEC had, and continues to have, a company-wide policy and/or practice of requiring Ms. Hernandez-Ayala and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, at CEC's management's direction, Ms. Hernandez-Ayala was required to complete opening and closing duties before clocking in for and after clocking out from her shifts, such as unlocking and locking the doors, and deactivating and activating the security alarm. Further, whenever Ms. Hernandez-Ayala arrived early for her shifts, CEC's management expected her to start working immediately, prior to her clocking in, such as scheduling events, assisting with inventory, or responding to emails from the human resources department. Additionally, CEC required Ms. Hernandez-Ayala and other aggrieved employees to travel to CEC's other restaurant locations for training or medical facilities to submit to drug testing, time for which they were not paid. As a further example, Ms. Hernandez-Ayala was required to communicate with CEC's management over the phone and outside of her scheduled shift times about work-related matters such as event planning, inventory, and closing procedures. Thus, CEC failed to track all of the time that employees spent performing work-related tasks after their shifts, and Ms. Hernandez-Ayala and other aggrieved employees received no compensation for this time.

Second, CEC had, and continues to have, a company-wide security policy and/or practice of requiring closing shift employees to leave the restaurant premises together in pairs and/or groups. Specifically, CEC's Employee Handbook states, in pertinent part, that: "the following are security procedures that must always be followed to ensure your safety and the safety of your co-workers. No one is allowed to be in the restaurant alone . . . ." and suggests that employees walk to vehicles in pairs. In adherence with CEC's written policy, after clocking out at the end of their shifts, Ms. Hernandez-Ayala and other aggrieved employees were required to wait for other employees to complete their own duties before they could leave CEC's premises together. For example, Ms. Hernandez-Ayala would sometimes clock out at the end of her shift, and then have wait until other employees had completed their closing tasks before being able to leave the premises. As a result, Ms. Hernandez-Ayala and other aggrieved employees were subject to CEC's control after they had clocked out for their shifts, but were not compensated for this time.

Third, on information and belief, CEC had, and continues to have, company-wide policies and/or practices of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. CEC's uniform use of labor budgets resulted in understaffing, such that there were too few employees on duty to handle the workload and attend to customers, while CEC also pressured employees to meet certain sales expectations. CEC also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Hernandez-Ayala and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Hernandez-Ayala worked through her meal periods in order to keep up with customer demand. As a further example, Ms. Hernandez-Ayala had her meal periods cut short or interrupted by having to assist customers or kitchen staff and/or by CEC's management asking her questions regarding employee training or scheduling. Because CEC did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Ms. Hernandez-Ayala and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Ms. Hernandez-Ayala and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Fourth, CEC had, and continues to have, a policy and/or practice of requiring that Ms. Hernandez-Ayala and other aggrieved employees carry company-issued radios and respond to requests at all times, including during meal periods. As a result, CEC's management contacted Ms. Hernandez-Ayala and other aggrieved employees on these radios during their meal periods to discuss work-related matters. CEC knew or should have known that Ms. Hernandez-Ayala and other aggrieved employees were performing work while off-the-clock in order to meet CEC's expectations, but failed to compensate them for this time.

Further, on information and belief, because CEC frowned upon employees accruing meal period penalties, CEC's management adjusted Ms. Hernandez-Ayala's and other aggrieved employees' time records to reflect compliant meal periods and/or pressured Ms. Hernandez-Ayala and other aggrieved employees to record compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that CEC would otherwise owe. Additionally, CEC's company-wide timekeeping system prevented Ms. Hernandez-Ayala and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Hernandez-Ayala and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, CEC did not record all hours worked during meal periods, and Ms. Hernandez-Ayala and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

CEC's failure to pay Ms. Hernandez-Ayala and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

As set forth above, CEC had company-wide policies and/or practices requiring Ms. Hernandez-Ayala and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, such as as completing opening and closing duties, scheduling events, assisting with inventory, responding to emails, traveling for training or drug testing, and communicating with management on the phone. Further, CEC implemented company-wide security practices and/or policies, including requiring employees to wait for coworkers to complete their closing duties before being allowed to leave the store premises. CEC failed to track this time that Ms. Hernandez-Ayala and other aggrieved employees spent working off-the-clock, and Ms. Hernandez-Ayala and other aggrieved employees received no compensation for this time.

Further, as also stated, due to CEC's uniform use of labor budgets and policies and/or practices of understaffing its locations while assigning heavy workloads, including pressure to meet sales expectations, failing to adhere to a schedule for meal periods, and requiring employees respond to radios, Ms. Hernandez-Ayala and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CEC's management adjusted Ms. Hernandez-Ayala's and other aggrieved employees' time records and/or pressured Ms. Hernandez-Ayala and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, CEC's company-wide timekeeping system prevented Ms. Hernandez-Ayala and other aggrieved employees from entering time worked during meal periods because the system locked out Ms. Hernandez-Ayala and other aggrieved employees for a full 30 minutes. Thus, CEC systematically failed to pay Ms. Hernandez-Ayala and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Accordingly, CEC regularly failed to pay at least minimum wages to Ms. Hernandez-Ayala and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to

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

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

During the relevant time period, as stated above, CEC had, and continues to have, company-wide policies and/or practices of understaffing due to labor budgeting and/or limited payroll allocation, while assigning heavy workloads, including pressuring employees to meet sales expectations, which has resulted in a lack of meal period coverage and prevented Ms. Hernandez-Ayala and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, CEC had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Hernandez-Ayala and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Ms. Hernandez-Ayala and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Hernandez-Ayala had to forgo and work through her meal periods. As a further example, Ms. Hernandez-Ayala had her meal periods cut short or interrupted in order to assist customers or kitchen staff and by CEC's management asking her work-related questions. Additionally, Ms. Hernandez-Ayala took her meal periods late, after the fifth hour of work, due to the lack of coverage and heavy workload. Ms. Hernandez-Ayala and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. To the extent CEC required Ms. Hernandez-Ayala and other aggrieved employees to sign written "on-duty" meal period agreements, such agreements are invalid as the nature of the work performed by Ms. Hernandez-Ayala and other aggrieved employees and do not necessitate an "on-duty" meal period under California law.

Moreover, as stated, CEC had, and continue to have, a company-wide policy and/or practice of requiring that Ms. Hernandez-Ayala and other aggrieved employees respond to requests on company-issued radios, including during meal periods. As a result, CEC's management contacted Ms. Hernandez-Ayala and other aggrieved employees on the radios during meal periods to discuss work-related matters and assign tasks.

Further, as stated, on information and belief, because CEC frowned upon employees accruing meal period penalties, CEC's management adjusted Ms. Hernandez-Ayala's and other aggrieved employees' time records to reflect compliant meal periods and/or pressured Ms. Hernandez-Ayala and other aggrieved employees to record compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that CEC would otherwise owe. As also stated, CEC's company-wide timekeeping system prevented Ms. Hernandez-Ayala and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Ms. Hernandez-Ayala and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. As a result of these policies, CEC falsified and deducted meal periods from Ms. Hernandez-Ayala's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

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

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

Accordingly, CEC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

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

Furthermore, on information and belief, during the relevant time period, CEC maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Hernandez-Ayala and other aggrieved employees remain on CEC's premises during their rest periods. Because Ms. Hernandez-Ayala and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, CEC effectively maintained control over Ms. Hernandez-Ayala and other aggrieved employees during rest periods.

As a result of CEC's practices and policies, Ms. Hernandez-Ayala and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Hernandez-Ayala missed her rest periods due to the lack of coverage, heavy workload, and CEC management's requirement that she attend staff meetings during her rest periods.

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

Accordingly, CEC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

Because CEC did not record the time Ms. Hernandez-Ayala and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), CEC did not list the correct amount of gross wages and net wages earned by Ms. Hernandez-Ayala and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CEC failed to accurately list the total number of hours worked by Ms. Hernandez-Ayala and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CEC engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Hernandez-Ayala and other aggrieved employees, in violation of section 1198.

Because CEC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Hernandez-Ayala and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Hernandez-Ayala and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment</u>

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

During the relevant time period, CEC willfully failed to pay Ms. Hernandez-Ayala and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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

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

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

Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen 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 provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, CEC required Ms. Hernandez-Ayala and other aggrieved employees to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device and/or mobile data expenses. For example, Ms. Hernandez-Ayala was required to use her personal cellular phone to communicate with her managers to discuss work-related issues and receive work assignments. Although CEC required Ms. Hernandez-Ayala and other aggrieved employees to use their personal mobile devices and/or mobile data to carry out their work-related duties, CEC failed to reimburse them for their costs incurred.

Second, during the relevant time period, CEC, on a company-wide basis, required that Ms. Hernandez-Ayala and other aggrieved employees use their own personal vehicles to travel to various locations such as banks to make deposits and CEC's other restaurant locations. For example, Ms. Hernandez-Ayala was required to travel from her usual restaurant location in Fontana, California, to CEC's restaurant located in Rancho Cucamonga, California, to attend training. Further, Ms. Hernandez-Ayala was required to travel to CEC's various restaurant locations in the area to pick up supplies and merchandise. Although CEC required Ms. Hernandez-Ayala and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, CEC failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, CEC required Ms. Hernandez-Ayala and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Hernandez-Ayala spent about $60 during her employment to purchase a vacuum because CEC failed to provide her with a working one, and it was required for the restaurant to operate properly and/or meet management's expectations. Although CEC required Ms. Hernandez-Ayala and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, CEC failed to reimburse them for their out-of-pocket costs to purchase necessary supplies and equipment.

CEC could have provided Ms. Hernandez-Ayala and other aggrieved employees with company mobile devices, company vehicles, and supplies and equipment; or CEC could have reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, and supply and equipment expenses. Instead, CEC passed these operating costs off onto Ms. Hernandez-Ayala and other aggrieved employees. At all relevant times, Ms. Hernandez-Ayala did not earn at least two (2) times the minimum wage.

Thus, CEC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Hernandez-Ayala and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

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

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

CEC failed to provide Ms. Hernandez-Ayala and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CEC's failure to provide Ms. Hernandez-Ayala and other aggrieved employees with written notice of basic information regarding their employment with CEC is in violation of Labor Code section 2810.5.

Ms. Hernandez-Ayala and other aggrieved employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." CEC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Hernandez-Ayala's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Hernandez-Ayala seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Hernandez-Ayala, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against CEC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Hernandez-Ayala seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

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

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

Best Regards,

Mao Shiokura

Copy: CEC ENTERTAINMENT, LLC (via U.S. Certified Mail); CEC ENTERTAINMENT, INC. (via U.S. Certified Mail); David A. Garcia, Esq., Ogletree Deakins, Park Tower, 695 Town Center Drive, Fifteenth Floor, Costa Mesa, CA 92626 (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
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Costa Mesa, CA 92626

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If YES, enter delivery address below: ☐ No

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