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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

HIGINIO ALVAREZ, DANIELA
HERNANDEZ-AYALA, STACEY
VELAZQUEZ, as aggrieved employees
pursuant to the Private Attorneys General
Act (“PAGA”), on behalf of the State of
California and other non-party Aggrieved
Employees,

Plaintiff,

vs.

CEC ENTERTAINMENT, LLC, a Texas
limited liability company; CEC
ENTERTAINMENT, INC., a Kansas
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23CV409445

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

- (1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

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1 Plaintiffs Higinio Alvarez, Daniela Hernandez-Ayala, and Stacey Velazquez, as aggrieved
2 employees and on behalf of the State of California and all other non-party Aggrieved Employees, allege
3 as follows:

4 JURISDICTION AND VENUE

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties and any other
7 available relief on behalf of Plaintiffs, the State of California, and other current and former employees
8 who worked for Defendants in California as non-exempt, hourly paid employees and received at least
9 one wage statement and against whom one or more violations of any provision in Division 2 Part 2
10 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable
11 Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at
12 any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce
13 Development Agency (“LWDA”) in this case on October 30, 2021, until judgment (“non-party
14 Aggrieved Employees”). Each Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California Constitution,
17 Article VI, section 10. The statute under which this action is brought does not specify any other basis for
18 jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and belief,
20 Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise
21 intentionally avail themselves of the California market so as to render the exercise of jurisdiction over
22 them by the California courts consistent with traditional notions of fair play and substantial justice.
23 There is no basis for federal diversity jurisdiction in this action given that the State of California, as the
24 real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction.
25 *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil
26 penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity
27 jurisdiction in this action, and that diversity jurisdiction cannot be established when each Plaintiff’s share
28 of the civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ or employed persons within the County of Santa Clara and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least three locations within the County of Santa Clara, including Defendants' restaurants located in Cupertino (19805 Stevens Creek Boulevard, Cupertino, California 95014); Gilroy (910 Renz Lane, Gilroy, California 95020); and San Jose (2445 Fontaine Road, San Jose, California 95121). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County, and Plaintiffs could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Higinio Alvarez is a resident of Harbor City, in Los Angeles County, California. Defendants employed Plaintiff Alvarez as an hourly paid, non-exempt employee from approximately September 2021 to June 2022. Plaintiff Alvarez worked as a Cast Member for Defendants at their restaurant located in Torrance, California. Plaintiff Alvarez typically worked four (4) or more hours per day, five (5) or more days per week. At the time Plaintiff Alvarez's employment with Defendants ended, he was compensated approximately \$15.00 per hour. Plaintiff Alvarez's job duties included, without limitation, preparing food items, ensuring all games were clean and operational, and attending to customers.

7. Plaintiff Daniela Hernandez-Ayala is a resident of Fontana, in San Bernardino County, California. Defendants employed Plaintiff Hernandez-Ayala as an hourly paid, non-exempt employee

1 from approximately November 2017 to March 2024. Plaintiff Hernandez-Ayala worked for Defendants
2 as a Cast Member and Assistant Manager at their restaurant located in Fontana, California. During her
3 employment, Plaintiff Hernandez-Ayala typically worked eight (8) hours or more per day and five (5)
4 days per week. Plaintiff Hernandez-Ayala's primary job duties included, without limitation, maintaining
5 guest relations, cleaning, planning events, conducting inventory, securing deposits, and preparing food.

6 8. Plaintiff Stacey Velazquez is a resident of California. Defendants employed Plaintiff
7 Velazquez as a non-exempt employee at their restaurant located in Pasadena, California from
8 approximately March 2018 to May 2024.

9 9. On information and belief, Defendants required some employees, including Plaintiff
10 Alvarez, to execute an arbitration agreement at the time of their hire or during their employment. On
11 further information and belief, Defendants' arbitration agreement was and is both procedurally and
12 substantively unconscionable. Specifically, Defendants presented employees with an "Arbitration
13 Agreement" during the onboarding process, which had to be reviewed and acknowledged immediately.
14 Specifically, the Arbitration Agreement was one of several documents presented to new employees for
15 signature during the orientation process, including the Cast Member – Kid Check Compliance;
16 Merchandise Safety (Cast Members); Sexual Harassment Acknowledgment; Play Pass Compliance
17 Procedure and Acknowledgment; and Chuck E. Cheese Rewards Program Compliance Procedure and
18 Acknowledgment, among other documents. Also, employees did not have a meaningful opportunity to
19 negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for
20 them to sign on a take-it or leave-it basis, along with all of the other on-boarding documents.

21 10. CEC ENTERTAINMENT, LLC was and is, upon information and belief, a Texas
22 limited liability company, and at all times hereinafter mentioned, an employer whose employees are
23 engaged throughout this county, the State of California.

24 11. CEC ENTERTAINMENT, INC. was and is, upon information and belief, a Kansas
25 corporation, and at all times hereinafter mentioned, an employer whose employees are engaged
26 throughout this county, the State of California.

27 12. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein
28 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint

1 and serve such fictitiously named Defendants once their names and capacities become known.

2 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 were the
3 partners, agents, owners, or managers of CEC ENTERTAINMENT, LLC and CEC
4 ENTERTAINMENT, INC. at all relevant times.

5 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
6 omissions alleged herein was performed by, or is attributable to, CEC ENTERTAINMENT, LLC; CEC
7 ENTERTAINMENT, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “CEC”), each
8 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
9 other co-Defendants and was acting within the course and scope of such agency, employment, joint
10 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all
11 Defendants were in accordance with, and represent, the official policy of Defendants.

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

16 16. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in
17 some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
18 and transactions alleged herein.

19 17. Under California law, Defendants are jointly and severally liable as employers for the
20 violations alleged herein because they have each exercised sufficient control over the wages, hours,
21 working conditions, and employment status of Plaintiffs and other non-party Aggrieved Employees.
22 Each Defendant had the power to hire and fire Plaintiffs and other non-party Aggrieved Employees,
23 supervised and controlled their work schedule and/or conditions of employment, determined their rate of
24 pay, and maintained their employment records. Defendants suffered or permitted Plaintiffs and other
25 non-party Aggrieved Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved
26 Employees so as to create a common-law employment relationship. As joint employers of Plaintiffs and
27 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
28 available to Plaintiffs and other non-party Aggrieved Employees under the law.

1 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and other non-
3 party Aggrieved Employees because Defendants have:

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

19 19. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there has
20 existed a unity of interest and ownership between Defendants such that any individuality and
21 separateness between the entities has ceased.

22 20. CEC ENTERTAINMENT, LLC; CEC ENTERTAINMENT, INC.; and/or DOES 1
23 through 10 are therefore alter egos of each other.

24 21. Adherence to the fiction of the separate existence of Defendants would permit an abuse
25 of the corporate privilege, and would promote injustice by protecting Defendants from liability for the
26 wrongful acts committed by them under the name CEC.

27 22. Plaintiffs further allege, upon information and belief, that the Defendants CEC
28 ENTERTAINMENT, LLC and CEC ENTERTAINMENT, INC. are alter egos of each other for the

1 following reasons:

- 2 (a) On the California Secretary of State’s website (<https://bizfileonline.sos.ca.gov>),
3 CEC ENTERTAINMENT, LLC and CEC ENTERTAINMENT, INC. have
4 the same principal and mailing address, which is “1707 Market Place, Suite 200,
5 Irving, Texas 75063”;
- 6 (b) According to the most recent “Statement of Information” forms filed with the
7 California Secretary of State, CEC ENTERTAINMENT, LLC and CEC
8 ENTERTAINMENT, INC. share common officers, including Chief Executive
9 Officer, David McKillips;
- 10 (c) On the California Secretary of State’s website, CEC ENTERTAINMENT, LLC
11 and CEC ENTERTAINMENT, INC. share the same agent for service of
12 process, “CORPORATION SERVICE COMPANY WHICH WILL DO
13 BUSINESS IN CALIFORNIA AS CSC – LAWYERS INCORPORATING
14 SERVICE”; and
- 15 (d) On information and belief, CEC ENTERTAINMENT, LLC and CEC
16 ENTERTAINMENT, INC. utilize the same standardized employment forms
17 and issue the same employment policies.

18 **PAGA REPRESENTATIVE ALLEGATIONS**

19 23. Defendants own and operate approximately 72 “Chuck E. Cheese” or “Peter Piper
20 Pizza” restaurant locations in California. Upon information and belief, Defendants maintain a single,
21 centralized Human Resources (HR) department at their corporate headquarters in Irving, Texas, for all
22 non-exempt, hourly paid employees working for Defendants in California, which is responsible for the
23 recruiting and hiring of new employees, and communicating and implementing Defendants’ company-
24 wide policies, including timekeeping policies and meal and rest period policies, to employees throughout
25 California.

26 24. In particular, Plaintiffs and other non-party Aggrieved Employees, on information and
27 belief, received the same standardized documents and/or written policies. Upon information and belief,
28 the usage of standardized documents and/or written policies, including new-hire documents, indicate that

1 Defendants dictated policies at the corporate level and implemented them company-wide, regardless of
2 their employees' assigned locations or positions. Upon information and belief, Defendants set forth
3 uniform policies and procedures in several documents provided at an employee's time of hire.

4 25. Upon information and belief, Defendants maintain a centralized Payroll department at
5 their corporate headquarters in Irving, Texas, which processes payroll for all non-exempt, hourly paid
6 employees working for Defendants at their various locations and jobsites in California, including
7 Plaintiffs and other non-party Aggrieved Employees. Based upon information and belief, Defendants
8 issue the same formatted wage statements to all non-exempt, hourly paid employees in California,
9 irrespective of their work locations. Upon information and belief, Defendants process payroll for
10 departing employees in the same manner throughout the State of California, regardless of the manner in
11 which each employee's employment ends.

12 26. Defendants continue to employ non-exempt or hourly paid employees in California.

13 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
14 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors
15 knowledgeable about California labor and wage law, employment and personnel practices, and about the
16 requirements of California law.

17 28. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other non-party
18 Aggrieved Employees were not paid for all hours worked because all hours worked were not recorded.

19 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
20 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive certain
21 wages for overtime compensation and that they were not receiving certain wages for overtime
22 compensation.

23 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
24 have known that other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay,
25 and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included
26 as eligible income all remuneration required by law, including but not limited to, all income derived from
27 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all
28 forms of remuneration in calculating the regular rate of pay for other non-party Aggrieved Employees.

1 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
2 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive at least
3 minimum wages for compensation and that they were not receiving at least minimum wages for work
4 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and other
5 non-party Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

6 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
7 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to meal periods in
8 accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not provided with timely,
10 uninterrupted, thirty (30) minute meal periods and that Plaintiffs and other non-party Aggrieved
11 Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their
12 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

13 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
14 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to rest periods in
15 accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1)
16 additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a
17 compliant rest period. In violation of the California Labor Code, Plaintiffs and other non-party
18 Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did
19 Defendants provide Plaintiffs and other non-party Aggrieved Employees with payment of one (1)
20 additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a
21 compliant rest period.

22 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
23 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive complete
24 and accurate wage statements in accordance with California law. In violation of the California Labor
25 Code, Plaintiffs and other non-party Aggrieved Employees were not provided complete and accurate
26 wage statements.

27 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
28 have known that they had a duty to maintain accurate and complete payroll records in accordance with

1 the Labor Code and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do
2 so.

3 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
4 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to timely payment of
5 wages during their employment. In violation of the California Labor Code, Plaintiffs and other non-
6 party Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime
7 wages, minimum wages, and/or meal and rest period premiums, within permissible time periods.

8 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
9 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to timely payment of
10 all wages earned upon termination of employment. In violation of the California Labor Code, Plaintiffs
11 and other non-party Aggrieved Employees did not receive payment of all wages due, including, but not
12 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
13 time periods.

14 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
15 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to suitable seating
16 and/or were entitled to sit when it did not interfere with the performance of their duties and also have
17 seats nearby to use during a lull in tasks that do require moving about or standing. In violation of the
18 California Labor Code and applicable IWC Wage Order, Defendants failed to provide Plaintiffs and
19 other non-party Aggrieved Employees with suitable seating.

20 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should
21 have known that Plaintiffs and other non-party Aggrieved Employees were entitled to receive full
22 reimbursement for all business-related expenses and costs they incurred during the course and scope of
23 their employment and that they did not receive full reimbursement of applicable business-related
24 expenses and costs incurred.

25 40. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that Defendants had a duty to provide Plaintiff and
27 other non-party Aggrieved Employees with written notice of the material terms of their employment
28 with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

1 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
2 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiffs and
3 other non-party Aggrieved Employees for all hours worked, and that Defendants had the financial ability
4 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
5 represented to Plaintiffs and other non-party Aggrieved Employees that they were properly denied
6 wages, all in order to increase Defendants' profits.

7 42. At all times herein set forth, PAGA provides that any provision of law under the Labor
8 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by
9 the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an
10 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and
11 other current or former employees pursuant to procedures outlined in California Labor Code section
12 2699.3.

13 43. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any person
14 who was employed by the alleged violator and against whom one or more of the alleged violations was
15 committed."

16 44. Plaintiffs and other current and former employees of Defendants are "aggrieved
17 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former
18 employees and one or more of the alleged violations were committed against them.

19 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
20 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have
21 been met:

- 22 (a) The aggrieved employee shall give written notice by online filing (hereinafter
23 "Employee's Notice") to the LWDA and by certified mail to the employer of
24 the specific provisions of the California Labor Code alleged to have been
25 violated, including the facts and theories to support the alleged violations.
- 26 (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a)
27 and any employer response to that notice shall be accompanied by a filing fee of
28 seventy-five dollars (\$75).

1 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer
2 and the aggrieved employee by certified mail that it does not intend to
3 investigate the alleged violation within sixty (60) calendar days of the postmark
4 date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the
5 LWDA Notice is not provided within sixty-five (65) calendar days of the
6 postmark date of the Employee’s Notice, the aggrieved employee may
7 commence a civil action pursuant to California Labor Code section 2699 to
8 recover civil penalties in addition to any other penalties to which the employee
9 may be entitled.

10 46. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, through
11 Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those
12 listed in Section 2699.5 after the following requirements have been met:

- 13 (a) The aggrieved employee or representative shall give written notice by online
14 filing to the LWDA and by certified mail to the employer of the specific
15 provisions of the California Labor Code alleged to have been violated (other
16 than those listed in Section 2699.5), including the facts and theories to support
17 the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to 2699.3(c)
19 and any employer response to that notice shall be accompanied by a filing fee of
20 seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33) calendar
22 days of the postmark date of the notice. The employer shall give written notice
23 by certified mail within that period of time to the aggrieved employee or
24 representative and the agency if the alleged violation is cured, including a
25 description of actions taken, and no civil action pursuant to Section 2699 may
26 commence. If the alleged violation is not cured within the 33-day period, the
27 employee may commence a civil action pursuant to Section 2699.

28 47. On October 26, 2022, Plaintiff Alvarez provided written notice by online filing to the

1 LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code
2 alleged to have been violated, including facts and theories to support the alleged violations, in accordance
3 with California Labor Code section 2699.3. Plaintiff Alvarez’s written notice was accompanied with the
4 applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed
5 receipt of Plaintiff Alvarez’s written notice and assigned Plaintiff PAGA Case Number LWDA-CM-
6 916105-22. A true and correct copy of Plaintiff Alvarez’s written notice to the LWDA and Defendants
7 dated October 26, 2022, is attached hereto as “Exhibit 1” and incorporated by reference.

8 48. On March 22, 2024, Plaintiff Velazquez provided notice of her PAGA claims to the
9 LWDA. A true and correct copy of Plaintiff Velazquez’s written notice to the LWDA and Defendants
10 dated March 22, 2024, is attached hereto as “Exhibit 2” and incorporated by reference.

11 49. On August 13, 2024, Plaintiff Hernandez-Ayala provided notice of her PAGA claims to
12 the LWDA. A true and correct copy of Plaintiff Hernandez-Ayala’s written notice to the LWDA and
13 Defendants dated August 13, 2024, is attached hereto as “Exhibit 3” and incorporated by reference.

14 50. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent the
15 written notices described above, and the LWDA has not responded that it intends to investigate
16 Plaintiffs’ claims, and Defendants have not cured the violations.

17 51. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor
18 Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of
19 California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 516, 1174(d),
20 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, and California Code of Regulations, Title 8, Section
21 11050(14).

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

1 in addition to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
2 as a private attorney general, seeks assessment and collection of civil penalties under Labor Code section
3 558 for himself, all other non-party Aggrieved Employees, and the State of California against
4 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC Wage
5 Order. Plaintiff, acting in the public interest as a private attorney general, does not seek the recovery of
6 unpaid wages under Labor Code section 558 from Defendants for violations of Labor Code sections 510,
7 512(a), 516, 1198, and the applicable IWC Wage Order.

8 53. Defendants, at all times relevant to this complaint, were employers or persons acting on
9 behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved Employees’ rights by
10 violating various sections of the California Labor Code as set forth above.

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

13 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a),
14 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys general,
15 seek assessment and collection of civil penalties for themselves, all other non-party Aggrieved
16 Employees, and the State of California against Defendants for violations of California Labor Code
17 sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1,
18 1198, 2802, 2810.5, and California Code of Regulations, Title 8, Section 11050(14).

19 **FIRST CAUSE OF ACTION**

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

21 **(Against all Defendants)**

22 56. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every
23 allegation set forth above.

24 57. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil
25 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.
26 Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 1174(d), 1194, 1198 Labor
27 Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for
28 violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

- 3 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage
4 Order for Defendants' failure to compensate Plaintiffs and other non-party
5 Aggrieved Employees with all required overtime pay, as set forth below;
- 6 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC
7 Wage Order for Defendants' failure to include all forms of remuneration in the
8 "regular rate" of pay as required by law for purposes of paying overtime wages
9 and/or meal and rest period premiums to other non-party Aggrieved Employees,
10 as set forth below;
- 11 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and
12 the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs
13 and other non-party Aggrieved Employees with at least minimum wages for all
14 hours worked, as set forth below;
- 15 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to provide Plaintiffs and
17 other non-party Aggrieved Employees with meal periods, as set forth below;
- 18 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC
19 Wage Order for Defendants' failure to authorize and permit Plaintiffs and other
20 non-party Aggrieved Employees to take rest periods, as set forth below;
- 21 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC
22 Wage Order for failure to provide accurate and complete wage statements to
23 Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- 24 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC
25 Wage Order for failure to maintain payroll records, as set forth below;
- 26 (h) Violation of Labor Code sections 204 for failure to pay all earned wages during
27 employment, as set forth below;
- 28 (i) Violation of Labor Code section 201, 202 and 203 for failure to pay all earned

wages upon termination, as set forth below;

- (j) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 223 for secretly paying lower wages than designated by statute. Specifically, failure to pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor Code section 1198;¹ and
- (l) Violation of Labor Code section 2802 for failure to reimburse business expenses.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

59. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

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

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved Employees working more than eight (8) hours

^{1/} Labor Code section 225.5 sets forth the penalty amounts for violation of section 223 as \$100 for each failure to pay each employee in any initial violation, and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

1 in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours
2 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

3 62. The applicable IWC Wage Order further provides that Defendants are and were required
4 to pay Plaintiffs and other non-party Aggrieved Employees working more than twelve (12) hours in a
5 day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular
6 rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including
7 nondiscretionary bonuses and incentive pay.

8 63. California Labor Code section 510 codifies the right to overtime compensation at one
9 and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours in a day or
10 forty (40) hours in a week or for the first eight (8) hours worked on the seventh (7th) day of work, and to
11 overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve
12 (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

13 64. During the relevant time period, Defendants willfully failed to pay all overtime wages
14 owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time period, Plaintiffs
15 and other non-party Aggrieved Employees were not paid overtime premiums for all of the hours they
16 worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of
17 forty (40) hours in a week, because all hours worked were not recorded. First, during the relevant time
18 period, Defendants had, and continue to have, a company-wide policy and/or practice requiring Plaintiffs
19 and other non-party Aggrieved Employees to perform various work-related tasks while off-the-clock
20 before their shifts. For example, due to Defendants' practice of scheduling some shifts outside of
21 daytime business hours, Plaintiff Alvarez and other non-party Aggrieved Employees could only enter
22 Defendants' restaurants to clock in when other managerial or keyholder employees were available to
23 open the doors. For example, on about five (5) occasions, after reporting to work on time, Plaintiff
24 Alvarez was forced to wait up to 30 minutes until a managerial employee arrived at the restaurant, before
25 being able to enter Defendants' restaurant and clock in because there was no one available for him to
26 open the doors for him. As a result, Plaintiffs and other non-party Aggrieved Employees received no
27 compensation for this time they remained under Defendants' control.

28 65. Moreover, Defendants' timekeeping system prevented Plaintiffs and other non-party

1 Aggrieved Employees from recording all hours worked, because the system locked out Plaintiffs and
2 other non-party Aggrieved Employees and would not permit them to clock in for the start of their shifts
3 unless they had clocked in exactly at their scheduled shift-start time. For instance, on some occasions,
4 Plaintiff Alvarez would arrive to work after his scheduled shift-start time, but due to Defendants'
5 timekeeping system, Plaintiff Alvarez was required to wait up to 10 minutes off-the-clock, until a
6 managerial employee became available to override the system lockout and allow him to clock in. Thus,
7 Defendants' timekeeping system prevented Plaintiffs and other non-party Aggrieved Employees from
8 recording all hours worked when they did not report to work exactly at their scheduled shift start-time.

9 66. Second, Defendants had, and continue to have, a company-wide policy and/or practice
10 of requiring Plaintiffs and other non-party Aggrieved Employees to perform tasks off-the-clock after
11 their shifts. For example, approximately once per month, Plaintiff Alvarez would clock out at the end of
12 his shift, but Defendants' managers required him to continue working before he could leave for the day,
13 completing tasks such as repairing arcade game machines and attractions, cleaning, and putting kitchen
14 equipment away. Thus, Defendants failed to track all of the time that employees spent performing work-
15 related tasks outside of their shifts, and Plaintiffs and other non-party Aggrieved Employees received no
16 compensation for this time.

17 67. Third, Defendants had, and continue to have, a company-wide security policy and/or
18 practice of requiring closing shift employees to leave the restaurant premises together in pairs and/or
19 groups. Specifically, Defendants' Employee Handbook states, in pertinent part, that: "the following are
20 security procedures that must always be followed to ensure your safety and the safety of your co-
21 workers. No one is allowed to be in the restaurant alone. . . ." and suggests that employees walk to
22 vehicles in pairs. In adherence with Defendants' written policy, after clocking out at the end of their
23 shifts, Plaintiff Alvarez and other non-party Aggrieved Employees were required to wait for other
24 employees to complete their own duties before they were released by a managerial employee and could
25 leave Defendants' premises together. For example, Plaintiff Alvarez would sometimes clock out at the
26 end of his shift, and then have wait up to five (5) minutes until his supervisor had completed his or her
27 closing tasks and locked up the restaurant premises, before being released and able to leave the premises.
28 As a result, Plaintiffs and other non-party Aggrieved Employees were subject to Defendants' control

1 after they had clocked out for their shifts, but were not compensated for this time.

2 68. Fourth, Defendants had, and continue to have, a company-wide policy and/or practice of
3 strictly staffing their restaurant locations based on the labor hours allocated by each location's labor or
4 payroll budget set by corporate. Defendants' uniform use of labor budgets, combined with the
5 assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period
6 coverage, because there were too few employees on duty to handle the workload and customer demand.
7 Defendants also had a practice of failing to schedule meal periods, which further caused Plaintiffs and
8 other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods. For
9 example, Plaintiff Alvarez worked through his meal periods approximately once per week in order to
10 keep up with customer demand and complete his duties. Because Defendants did not employ or staff a
11 sufficient number of employees to meet customer demand, there was no one available to relieve
12 employees needing meal period coverage, and Plaintiffs and other non-party Aggrieved Employees were
13 not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
14 receive a meal period. Consequently, Plaintiffs and other non-party Aggrieved Employees were required
15 to work through and had their unpaid meal periods interrupted in order to complete their assigned duties
16 and handle customer demand, time for which they were not paid.

17 69. Moreover, because Defendants frowned upon employees accruing meal period
18 penalties, Defendants pressured employees to clock out for meal periods, even when they did not receive
19 a compliant meal period. Consequently, Plaintiffs and other non-party Aggrieved Employees performed
20 work during meal periods for which they were not paid. Alternatively, on information and belief,
21 Defendants' timekeeping system prevented Plaintiffs and other non-party Aggrieved Employees from
22 recording all hours worked when their meal periods were shortened or interrupted, because the system
23 locked out Plaintiffs and other non-party Aggrieved Employees once they clocked out for a meal period,
24 and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus,
25 Defendants' timekeeping policies and/or practices further prevented Plaintiffs and other non-party
26 Aggrieved Employees from recording all hours worked when their meal periods were missed, shortened,
27 and/or interrupted.

28 70. Defendants employed many of their employees, including Plaintiffs, as hourly non-

1 exempt employees. In California, an employer is required to pay hourly employees for all “hours
2 worked,” which includes all time that an employee is under control of the employer and all time the
3 employee is suffered and permitted to work. This includes the time an employee spends, either directly
4 or indirectly, performing services which inure to the benefit of the employer.

5 71. Fifth, Plaintiffs and other non-party Aggrieved Employees worked more minutes per
6 shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff
7 and other current and former aggrieved California-based hourly non-exempt employees all wages at the
8 applicable minimum wage for all hours worked due to Defendants’ policies, practices, and/or procedures
9 including, but not limited to:

- 10 i. Requiring Plaintiff and other current and former aggrieved California-based hourly
11 non-exempt employees who worked closing shifts required to perform closing
12 procedures including, but not limited to, locking Defendant’s stores after clocking
13 out for the end of their shift without being paid for that time.

14 72. Sixth, Defendants employed many of their employees, including Plaintiffs and other
15 non-party Aggrieved Employees, as hourly non-exempt employees. In California, an employer is
16 required to pay hourly employees for all “hours worked,” which includes all time that an employee is
17 under control of the employer and all time the employee is suffered and permitted to work. This includes
18 the time an employee spends, either directly or indirectly, performing services that inure to the benefit of
19 the employer. Defendants failed to pay Plaintiff and other non-party Aggrieved Employees overtime
20 wages for all overtime hours worked due to Defendants’ policies, practices, and/or procedures including,
21 but not limited to:

- 22 i. Requiring Plaintiff and other current and former aggrieved California-based hourly
23 non-exempt employees who worked closing shifts required to perform closing
24 procedures including, but not limited to, locking Defendant’s stores after clocking
25 out for the end of their shift without being paid for that time.

26 73. Seventh, Defendants required Plaintiff Hernandez-Ayala and other non-party Aggrieved
27 Employees to travel to Defendants’ other restaurant locations for training or medical facilities to submit
28 to drug testing, time for which they were not paid.

1 74. Eighth, Plaintiff Hernandez-Ayala and other non-party Aggrieved Employees were
2 required to communicate with Defendants' management over the phone and outside of her scheduled
3 shift times about work-related matters such as event planning, inventory, and closing procedures.

4 75. Defendants knew or should have known that, as a result of these company-wide
5 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were performing their
6 assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or
7 permitted to perform work for which they were not paid. Because Plaintiffs and other non-party
8 Aggrieved Employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or
9 more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and
10 other non-party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
11 actually worked.

12 76. Furthermore, Defendants did not pay other non-party Aggrieved Employees the correct
13 overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage,
14 Defendants paid other non-party Aggrieved Employees incentive pay, nondiscretionary bonuses, and/or
15 other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to
16 incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the
17 calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore,
18 during times when other non-party Aggrieved Employees worked overtime and received these other
19 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

20 77. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees the
21 balance of overtime compensation as required by California law, violates the provisions of California
22 Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore
23 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

25 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1, AND 1198**

26 78. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid
28 to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable

1 work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject
2 to the control of an employer, and includes all the time the employee is suffered or permitted to work,
3 whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

4 79. As stated above, Defendants had company-wide policies and/or practices requiring
5 Plaintiffs and other non-party Aggrieved Employees to perform various work-related tasks while off-the-
6 clock before and after their shifts, including waiting for a managerial or keyholder employee to arrive
7 and open Defendants’ restaurants, waiting to clock in because the timekeeping system had locked them
8 out, repairing arcade machines after clocking out, and waiting to leave the premises in pairs. Thus,
9 Defendants failed to track this time Plaintiffs and other non-party Aggrieved Employees spent working
10 off-the-clock, Plaintiffs and other non-party Aggrieved Employees received no compensation for this
11 time.

12 80. Additionally, as set forth above, due to Defendants’ uniform use of labor budgets,
13 understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of
14 meal period coverage, Plaintiffs and other non-party Aggrieved Employees were impeded from taking
15 all uninterrupted meal periods to which they were entitled and were required to work during their meal
16 periods, time for which they were not paid. Furthermore, as stated above, in order to limit meal penalties
17 that Defendants would otherwise owe, Defendants pressured Plaintiffs and other non-party Aggrieved
18 Employees to clock out for meal periods, even when they did not receive a compliant meal period.
19 Alternatively, as set forth above, on information and belief, Defendants systematically failed to pay
20 Plaintiffs and other non-party Aggrieved Employees for actual hours worked during unpaid meal
21 periods, because Defendants’ timekeeping system locked out Plaintiffs and other non-party Aggrieved
22 Employees for 30 minutes when they clocked out for a meal period. Combined, these practices
23 prevented Plaintiffs and other non-party Aggrieved Employees from recording all hours worked when
24 their meal periods were missed, shortened, and/or interrupted, time for which they were not paid.

25 81. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs and
26 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not qualify for
27 overtime premium payment, Defendants did not pay at least minimum wages for those hours worked
28 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

82. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

83. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and non-party Aggrieved Employees' employment by Defendants.

84. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

86. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, 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.

87. As stated above, Defendants had, and continue to have, company-wide policies and/or practices of understaffing their locations due to labor budgeting and/or limited payroll allocation, which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal

1 period coverage and prevented Plaintiffs and other non-party Aggrieved Employees from taking all
2 timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiffs and other non-party
3 Aggrieved Employees had to work through all or part of their meal periods, had their meal periods
4 interrupted, and/or had to wait extended periods of time before taking meal periods. For example,
5 Plaintiff Alvarez was required to take his meal period late, after having worked in excess of five (5)
6 hours into his shift, due to the lack of coverage and in order to meet Defendants' expectations.

7 88. Additionally, as stated, because Defendants frowned upon employees accruing meal
8 period penalties, Defendants' management pressured Plaintiffs and other non-party Aggrieved
9 Employees to clock out for meal periods, regardless of whether they had received a compliant meal
10 period. For example, Plaintiff Alvarez was required to clock out for his meal period to record that he had
11 received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

12 89. Furthermore, as stated, Defendants' company-wide timekeeping system prevented
13 Plaintiffs and other non-party Aggrieved Employees from recording when their meal periods were
14 shortened or interrupted, because the system locked out Plaintiffs and other non-party Aggrieved
15 Employees once they clocked out for a meal period, and would not permit them to clock back in from a
16 meal period before 30 minutes had elapsed. For example, about three (3) times per month, Plaintiff
17 Alvarez's meal periods were interrupted and shortened by 5-10 minutes in order to assist his coworkers
18 with repairing arcade game machines and to keep up with customer demand.

19 90. Moreover, Defendants did not provide other non-party Aggrieved Employees with
20 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
21 Plaintiffs and other non-party Aggrieved Employees did not sign valid meal period waivers on days that
22 they were entitled to meal periods and were not relieved of all duties.

23 91. Further, Defendants failed to authorize or permit legally required and compliant meal
24 periods to Plaintiffs and non-party Aggrieved Employees due to Defendants' policies, practices, and/or
25 procedures, including but not limited to:

- 26 i. Due to chronic understaffing, Plaintiff and other current and former aggrieved
27 California-based hourly non-exempt employees were required to clock out for their
28 meal breaks and continue to work through their off-the-clock meal breaks

1 92. Further, Defendants have, and continue to have, a policy and/or practice of requiring that
2 Plaintiff Hernandez-Ayala and other non-party Aggrieved Employees carry company-issued radios and
3 respond to requests at all times, including during meal periods. As a result, Defendants' management
4 contacted Plaintiff Hernandez-Ayala and other non-party Aggrieved Employees on these radios during
5 their meal periods to discuss work-related matters. Defendants knew or should have known that Plaintiff
6 Hernandez-Ayala and other aggrieved employees were performing work while off-the-clock in order to
7 meet Defendants' expectations, but failed to compensate them for this time

8 93. Further, Defendants have, and continue to have, a policy and/or practice of requiring that
9 Plaintiff Hernandez-Ayala and other non-party Aggrieved Employees to work on-duty meal periods. To
10 the extent Defendants required Plaintiff Hernandez-Ayala and other non-party Aggrieved Employees to
11 sign written "on-duty" meal period agreements, such agreements are invalid as the nature of the work
12 performed by them and do not necessitate an "on-duty" meal period under California law.

13 94. Plaintiffs allege that Defendants maintained a policy, practice, and/or procedure of
14 failing to compensate Plaintiffs and non-party Aggrieved Employees one (1) hour of pay at their regular
15 rate of pay for each workday that Plaintiffs and non-party Aggrieved Employees did not receive legally
16 required and compliant meal periods, in violation of Labor Code section 226.7.

17 95. Defendants knew or should have known that as a result of their policies and practices,
18 Plaintiffs and other non-party Aggrieved Employees were not actually relieved of all duties to take
19 timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay
20 Plaintiffs and other non-party Aggrieved Employees all meal period premiums when meal periods were
21 missed, late, short, and/or interrupted.

22 96. Furthermore, Defendants engaged in a company-wide practice and/or policy of not
23 paying all meal period premiums owed when compliant meal periods are not provided. Because of this
24 practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not received premium
25 pay for missed, late, shortened, and interrupted meal periods. Alternatively, to the extent that Defendants
26 did pay Plaintiffs and other non-party Aggrieved Employees premium pay for missed, late, shortened,
27 and interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees the correct
28 rate of pay for premiums because Defendant systematically failed to include all forms of compensation

1 such as incentive pay and/or nondiscretionary bonuses, and/or other forms of remuneration, in the
2 regular rate of pay.

3 97. Defendants' conduct violates the applicable IWC Wage Order, and California Labor
4 Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are
5 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
6 (g).

7 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
8 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

9 98. At all relevant times herein set forth, the applicable IWC Wage Order and California
10 Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other non-party Aggrieved
11 Employees' employment by Defendants.

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

17 100. At all relevant times, California Labor Code section 226.7 provides that no employer
18 shall require an employee to work during any rest period mandated by an applicable order of the
19 California IWC. To comply with its obligation to authorize and permit rest periods under California
20 Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any
21 control over how employees spend their break time, and relieve their employees of all duties—including
22 the obligation that an employee remain on call. A rest period, in short, must be a period of rest."
23 *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

24 101. Pursuant to the applicable IWC Wage Order and California Labor Code section
25 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from Defendants
26 one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period
27 was not authorized and permitted.

28 102. During the relevant time period, Defendants regularly failed to authorize and permit

1 Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four
2 (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide
3 practices of labor budgeting and/or limited payroll allocation, understaffing, and assignment of heavy
4 workloads, resulted in a lack of rest period coverage and prevented Plaintiffs and other non-party
5 Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.
6 Additionally, Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to
7 provide adequate rest period coverage, further led to Plaintiffs and other non-party Aggrieved Employees
8 not being authorized and permitted to take rest periods.

9 103. Furthermore, upon information and belief, Defendants maintained a company-wide on-
10 premises rest period policy, which mandated that Plaintiffs and other non-party Aggrieved Employees
11 remain on Defendants' premises during their rest periods. Because Plaintiffs and other non-party
12 Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied
13 the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus,
14 Defendants effectively maintained control over Plaintiffs and other non-party Aggrieved Employees
15 during rest periods.

16 104. As a result, Plaintiffs and other non-party Aggrieved Employees would work shifts in
17 excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and
18 authorized to take all ten (10) minute rest periods to which they were entitled. For example,
19 approximately five (5) to eight (8) times during his employment, Plaintiff Alvarez had to forego his rest
20 periods because the restaurant was busy, did not have coverage, and there was an expectation for all
21 employees to work through their rest periods. When Plaintiff Alvarez was able to take his rest periods,
22 they were often interrupted in order to assist with cleaning tables or repairing arcade game machines.

23 105. Defendants have also engaged in a systematic, company-wide practice and/or policy of
24 not paying rest period premiums owed when rest periods are not authorized and permitted. Because
25 Defendants frowned upon employees accruing rest period penalties, Defendants pressured Plaintiff
26 Alvarez and other non-party Aggrieved Employees to falsify the time rest periods were taken and/or
27 adjusted employee records to reflect compliant and/or timely rest periods, regardless of whether Plaintiff
28 Alvarez and other non-party Aggrieved Employees had received a compliant rest period at that time or

1 not, in order to strictly limit rest period penalties that Defendants would otherwise owe. Moreover,
2 Defendants' company-wide timekeeping system prevented Plaintiffs and other non-party Aggrieved
3 Employees from recording when their rest periods were shortened or interrupted, because the system
4 locked out Plaintiffs and other non-party Aggrieved Employees once they "clocked out" for a rest period,
5 and would not permit them to "clock back in" from a rest period before 10 minutes had elapsed.

6 106. Defendants have also engaged in a company-wide practice and/or policy of not paying
7 all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of
8 this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not received all
9 premium pay for missed rest periods. Alternatively, to the extent that CEC did pay other non-party
10 Aggrieved Employees one (1) additional hour of premium pay for missed rest periods, Defendants did
11 not pay other non-party Aggrieved Employees at the correct rate of pay for premiums because
12 Defendants failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses,
13 and/or other forms of remuneration, in the regular rate of pay.

14 107. Further, Defendants failed to authorize or permit all legally required and compliant rest
15 periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt
16 employees due to Defendants' policies, practices, and/or procedures including, but not limited to:

- 17 i. Due to chronic understaffing, Plaintiff and other current and former aggrieved
18 California-based hourly non-exempt employees were required to continue to work
19 through their rest breaks;
- 20 ii. Discouraging off-duty, off-premises rest breaks by requiring Plaintiff and other
21 current and former aggrieved California-based hourly non-exempt employees to
22 clock out for rest breaks if they wished to leave the premises for their rest breaks.

23 108. Additionally, Plaintiffs alleges that Defendants maintained a policy, practice, and/or
24 procedure of failing to compensate Plaintiff and non-party Aggrieved Employees with one (1) hour of
25 pay at their regular rate of pay for each workday they did not receive legally required and compliant rest
26 periods, in violation of Labor Code section 226.7.

27 109. Accordingly, Defendants failed to authorize and permit all compliant rest periods and
28 failed to pay the full rest period premiums due. Defendants' conduct violates the applicable IWC Wage

Order and California Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

**FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

111. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiffs and other non-party 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, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

112. Because Defendants did not record the time Plaintiffs and other non-party Aggrieved Employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiffs and other non-party 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).

113. Additionally, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages in compliance with section

226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). Defendants 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).

114. 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 the hours they worked off-the-clock.

115. 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), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-party 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.

116. 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, Defendants engaged in company-wide practices and/or policies of failing to record

1 actual hours worked, and thereby failed to keep accurate records of work period and meal period start
2 and end times for Plaintiffs and other non-party Aggrieved Employees in violation of section 1198.
3 Furthermore, in light of Defendants' failure to other non-party Aggrieved Employees with second 30-
4 minute meal periods to which they were entitled, Defendants kept no records of meal start and end times
5 for second meal periods.

6 117. Defendants' conduct violates California Labor Code 226(a), 1174(d), and 1198.
7 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
8 pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

9 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

10 **VIOLATION OF LABOR CODE SECTION 204**

11 118. At all relevant times herein set forth, California Labor Code section 204 requires that all
12 wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any
13 calendar month, other than those wages due upon termination of an employee, are due and payable
14 between the 16th and the 26th day of the month during which the labor was performed. Labor Code
15 section 204 further provides that all wages earned by any person in any employment between the 16th
16 and the last day, inclusive, of any calendar month, other than those wages due upon termination of an
17 employee, are due and payable between the 1st and the 10th day of the following month.

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

24 120. During the relevant time period, Defendants willfully failed to pay Plaintiffs and other
25 non-party Aggrieved Employees all wages due to them within any time period specified by California
26 Labor Code section 204 including, but not limited to, overtime wages, minimum wages, and/or meal and
27 rest period premiums.

28 121. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover

1 civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES UPON TERMINATION**

3 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

4 122. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an
5 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
6 payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages
7 shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has
8 given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
9 is entitled to his or her wages at the time of quitting. Labor Code section 203 requires the payment of
10 penalties for the willful failure to pay final wages in accordance with sections 201 and 202.

11 123. Defendants willfully failed to pay Plaintiffs and other non-party Aggrieved Employees
12 who are no longer employed by Defendants the earned and unpaid wages set forth above, including but
13 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the
14 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ. Defendants
15 also failed to pay waiting time penalties under Labor Code section 203.

16 124. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees who are
17 no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
18 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201, 202, and
19 203. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
20 pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE SUITABLE SEATING**

22 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
23 **REGULATIONS, TITLE 8, SECTION 11050(14)(A)**

24 125. At all relevant times herein, California Labor Code section 1198 makes it illegal to
25 employ an employee under conditions of labor that are prohibited by the applicable wage order.
26 California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the
27 commission shall be the ... standard conditions of labor for employees. The employment of any
28 employee ... under conditions of labor prohibited by the order is unlawful."

1 126. California Code of Regulations, Title 8, section 11050(14)(A) provides that “[a]ll
2 working employees shall be provided with suitable seats when the nature of the work reasonably permits
3 the use of seats.”

4 127. Defendants’ California restaurants are generally similar in their layout and design and
5 there was, and continues to be, space behind host stands, such as the Kid Check stand, to allow for the
6 presence and use of a seat or stool by other Plaintiff Alvarez and other non-party Aggrieved Employees
7 (with reasonable or no modification to these work areas) during the performance of their work duties.
8 Defendants could provide Plaintiff Alvarez and other non-party Aggrieved Employees with a seat or
9 stool at their host stands, but instead deny employees seating and force Plaintiff Alvarez and other non-
10 party Aggrieved Employees to stand throughout the day.

11 128. Plaintiff Alvarez and other non-party Aggrieved Employees spent a substantial portion
12 of their day behind or at these host stands. The nature of the work of an employee performing host
13 duties at host stands can reasonably be accomplished from a seated position. However, as set forth
14 herein, Defendants systematically, and on a company-wide basis, do not provide seats or stools at or near
15 the host stands, forcing Plaintiff Alvarez and other non-party Aggrieved Employees to stand throughout
16 their work shifts.

17 129. Defendants violated California Labor Code section 1198 and California Code of
18 Regulations, Title 8, section 11050(14)(A), because Plaintiffs and other non-party Aggrieved Employees
19 were not allowed to sit, even when it would not have interfered with the performance of their duties, nor
20 were they provided with suitable seats. Defendants’ management did not inform Plaintiffs and other
21 non-party Aggrieved Employees that they were allowed to sit down, provide any means for them to sit
22 down, or mention any policy regarding sitting.

23 130. As a result of Defendants’ company-wide policy and/or practice of prohibiting
24 employees from sitting during their shifts and company-wide failure to provide suitable seating,
25 Plaintiffs and other non-party Aggrieved Employees were forced to stand during shifts and denied seats.
26 Defendants’ failure to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees
27 violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001,
28 subdivision 14(A) and California Code of Regulations, Title 8, section 11050(14)(A).

131. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11050(14)(B)

132. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

133. California Code of Regulations, Title 8, section 11070 subdivision 14(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

134. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(B), because Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even during lulls in their work duties, nor were they provided with suitable seats in reasonable proximity to their work areas.

135. Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied, and continue to deny, employees seating, forcing them to stand throughout the day.

136. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that

1 require standing. In other words, to the extent Plaintiffs and other non-party Aggrieved Employees
2 engaged in duties in which the nature of the work required standing, Defendants denied them the use of
3 seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiffs and other
4 non-party Aggrieved Employees of their rights to a seat or stool under California law.

5 137. As a result of Defendants' company-wide policy and/or practice of prohibiting
6 employees from sitting at any time, even when they were not engaged in active duties requiring standing,
7 and company-wide failure to provide seats in reasonable proximity to their work areas, Plaintiffs and
8 other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants'
9 failure to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees violated and
10 continues to violate California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision
11 14(B) and California Code of Regulations, Title 8, section 11070 subdivision 14(B).

12 138. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover
13 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

14 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

15 **VIOLATION OF LABOR CODE SECTION 2802**

16 139. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each and every
17 allegation set forth above.

18 140. At all times herein set forth, California Labor Code section 2802 provides that an
19 employer must reimburse employees for all necessary expenditures and losses incurred by the employee
20 in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers
21 from passing off their cost of doing business and operating expenses on to their employees. *Cochran v.*
22 *Schwan 's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC
23 Wage Order No. 5-2001, provides that: "[W]hen the employer requires the use of tools or equipment or
24 are necessary to the performance of a job, such tools and equipment shall be provided and maintained by
25 the employer, except that an employee Whose wages are at least two (2) times the minimum wage
26 provided herein may provide and maintain hand tools and equipment customarily required by the trade
27 or craft."

28 141. First, during the relevant time period, Defendants required Plaintiffs and other non-party

1 Aggrieved Employees to use their personal mobile devices, including, but not limited to, cellular phones,
2 and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-
3 related mobile device and/or mobile data expenses. For example, Plaintiffs were required to use their
4 personal cellular phone to communicate with their managers to discuss work-related issues and receive
5 work assignments. Although Defendants required Plaintiffs and other non-party Aggrieved Employees
6 to use their personal mobile devices and mobile data to carry out their work-related duties, Defendants
7 failed to reimburse them for their costs incurred.

8 142. Second, during the relevant time period, Defendants, on a company-wide basis, required
9 that Plaintiffs and other non-party Aggrieved Employees use their own personal vehicles to travel to
10 various locations such as banks to make deposits and Defendants' various restaurant locations. For
11 example, Plaintiff Daniela Hernandez-Ayala was required to travel from her usual restaurant location in
12 Fontana, California, to Defendants' restaurant located in Rancho Cucamonga, California, to attend
13 training. Further, Plaintiff Daniela Hernandez-Ayala was required to travel to Defendants' various
14 restaurant locations in the area to pick up supplies and merchandise. Although Defendants required
15 Plaintiffs and other non-party Aggrieved Employees to utilize their personal vehicles to carry out their
16 work-related responsibilities, Defendants failed to reimburse them for their mileage or travel expenses.

17 143. Third, during the relevant time period, Defendants required Plaintiffs and other non-
18 party Aggrieved Employees to purchase supplies and equipment necessary for the performance of their
19 duties, but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff Daniela
20 Hernandez-Ayala spent about \$60 during her employment and purchased a vacuum because Defendants
21 failed to provide her with a working one, and it was required for the restaurant to operate properly and/or
22 meet management's expectations. Although Defendants required Plaintiffs and other non-party
23 Aggrieved Employees to purchase supplies and equipment to carry out their work-related
24 responsibilities, Defendants failed to reimburse them for their out-of-pocket costs to purchase necessary
25 supplies and equipment.

26 144. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees
27 with company mobile devices, company vehicles, and supplies and equipment, or, Defendants could
28 have reimbursed employees for mobile device usage, mileage, travel expenses, and supply expenses.

1 Instead, Defendants passed these operating costs off onto Plaintiffs and other non-party Aggrieved
2 Employees.

3 145. Defendants' company-wide policy and/or practice of not reimbursing employees for
4 expenses necessarily incurred and passing on their operating costs to Plaintiffs and other non-party
5 Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and
6 willfully failed to reimburse Plaintiffs and other non-party Aggrieved Employees for necessary business-
7 related expenses and costs.

8 146. Plaintiffs are entitled to recover from Defendants their business-related expenses
9 incurred during the course and scope of their employment, plus interest.

10 **FAILURE TO PROVIDE NOTICE OF MATERIAL TERMS OF EMPLOYMENT**

11 **VIOLATION OF LABOR CODE SECTION 2810.5**

12 147. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each and every
13 allegation set forth above.

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

27 149. Defendants failed to provide Plaintiff Hernandez-Ayala and other non-party Aggrieved
28 Employees written notice that lists all the requisite information set forth in Labor Code section

1 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff Hernandez-Ayala and other non-party
2 Aggrieved Employees with written notice of basic information regarding their employment with
3 Defendants is in violation of Labor Code section 2810.5.

4 150. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover
5 civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f),
6 and (k).

7 **SECRET PAYMENT OF LOWER WAGES THAN DESIGNATED BY STATUTE**

8 **VIOLATION OF LABOR CODE SECTION 223**

9 151. Plaintiffs incorporate by reference and re-alleges as if fully stated herein each and every
10 allegation set forth above.

11 152. Labor Code section 223 provides that, where any statute or contract requires an
12 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
13 purporting to pay the wage designated by statute or contract. By engaging in the unlawful conduct
14 alleged herein, including by failing to: pay overtime wages at the applicable legal overtime rate, meal
15 break premiums and lawful sick pay at the employees' regular rate of pay, as established by Labor Code
16 sections 226.7, 246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as
17 incorporated by Labor Code section 1198, Defendants secretly paid a lower wage than designated by
18 statute while purporting to pay the wages designated by statute, in violation of Labor Code section 223.

19 **REQUEST FOR JURY TRIAL**

20 Plaintiffs request a trial by jury.

21 **PRAYER FOR RELIEF**

22 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and judgment
23 against Defendants, jointly and severally, as follows:

24 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
25 (\$25,000). Plaintiffs reserve the right to amend his prayer for relief to seek a different amount.

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

27 2. That the Court declare, adjudge and decree that Defendants violated the following
28 California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved Employees: 510 and

1 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms
2 of remuneration in the “regular rate” of pay for purposes of paying overtime wages and/or meal and rest
3 period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all
4 hours worked); 226.7, 512(a), 516, 1198 (by failing to provide all meal periods); 226.7, 516, and 1198
5 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide
6 accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
7 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
8 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 223 (by secretly
9 paying lower wages than required by statute); and 2802 (failure to reimburse business-related expenses);

10 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558,
11 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223,
12 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, and
13 California Code of Regulations, Title 8, Section 11050(14);

14 4. For attorneys’ fees and costs pursuant to California Labor Code section 2699(g)(1), and
15 any and all other relevant statutes, for Defendants’ violations of California Labor Code sections 201,
16 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802,
17 2810.5, and California Code of Regulations, Title 8, Section 11050(14);

18 5. For pre-judgment and post-judgment interest as provided by law; and

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

20
21 Dated: May 28, 2026

Respectfully submitted,

Capstone Law APC

23 By: /s/ Robert Drexler

24 Robert Drexler

Jonathan Lee

25 Robert Myong

26 Attorneys for Plaintiffs Higinio Alvarez and Daniela
27 Hernandez-Ayala
28

Dated: May 28, 2026

Lavi & Ebrahimian, LLP

By: /s/ Joseph Lavi

Joseph Lavi
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EXHIBIT “1”



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October 26, 2022

VIA ONLINE SUBMISSION

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

Subject: *Higinio Alvarez v. CEC Entertainment, LLC, et al.*

Dear PAGA Administrator:

This office represents Higinio Alvarez in connection with his claims under the California Labor Code. Mr. Alvarez was an employee of CEC ENTERTAINMENT, LLC and/or CEC ENTERTAINMENT, INC. For the purposes of this letter, Mr. Alvarez 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 STE 200
IRVING, TX 75063

Mr. Alvarez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Alvarez seeks relief on behalf of himself, 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 Mr. Alvarez as an hourly paid, non-exempt employee from approximately September 2021 to June 2022. Mr. Alvarez worked for CEC as a Cast Member at its restaurant location in Torrance, California. During his employment, Mr. Alvarez typically worked four (4) hours or more per day, and five (5) days or more per week. At the time Mr. Alvarez's employment with CEC ended, he earned \$15.00 per hour. His job duties included, without limitation, preparing food items, ensuring all games were clean and operational, and attending to customers.

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

CEC’s Company-Wide and Uniform Payroll and HR Practices

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 Mr. Alvarez 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 Mr. Alvarez 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 Mr. Alvarez and other aggrieved employees. Further, CEC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Mr. Alvarez 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 Mr. Alvarez and other aggrieved employees in California.

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

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in 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 Mr. Alvarez and other aggrieved employees. During the relevant time period, Mr. Alvarez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve

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

(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 requiring Mr. Alvarez and other aggrieved employees to perform various work-related tasks while off-the-clock before their shifts. For example, due to CEC's practice of scheduling some shifts outside of daytime business hours, Mr. Alvarez and other aggrieved employees could only enter CEC's restaurants to clock in when other managerial or keyholder employees were available to open the doors. For example, on about five (5) occasions, after reporting to work on time, Mr. Alvarez was forced to wait up to 30 minutes until a managerial employee arrived at the restaurant, before being able to enter CEC's restaurant and clock in because there was no one available for him to open the doors for him. As a result, Mr. Alvarez and other aggrieved employees received no compensation for this time they remained under CEC's control.

Moreover, CEC's timekeeping system prevented Mr. Alvarez and other aggrieved employees from recording all hours worked, because the system locked out Mr. Alvarez and other aggrieved employees and would not permit them to clock in for the start of their shifts unless they had clocked in exactly at their scheduled shift-start time. For instance, on some occasions, Mr. Alvarez would arrive to work after his scheduled shift-start time, but due to CEC's timekeeping system, Mr. Alvarez was required to wait up to 10 minutes off-the-clock, until a managerial employee became available to override the system lockout and allow him to clock in. Thus, CEC's timekeeping system prevented Mr. Alvarez and other aggrieved employees from recording all hours worked when they did not report to work exactly at their scheduled shift start-time.

Second, CEC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Alvarez and other aggrieved employees to perform tasks off-the-clock after their shifts. For example, approximately once per month, Mr. Alvarez would clock out at the end of his shift, but CEC's managers required him to continue working before he could leave for the day, completing tasks such as repairing arcade game machines and attractions and cleaning putting kitchen equipment away. Thus, CEC failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Alvarez and other aggrieved employees received no compensation for this time.

Third, 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, Mr. Alvarez and other aggrieved employees were required to wait for other employees to complete their own duties before they were released by a managerial employee and could leave CEC's premises together. For example, Mr. Alvarez would sometimes clock out at the end of his shift, and then have wait up to five (5) minutes until his supervisor had completed his or her closing tasks and locked up the restaurant premises, before being released and able to leave the premises. As a result, Mr. Alvarez 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.

Fourth, CEC had, and continues to have, a company-wide policy and/or practice 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, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and customer demand. CEC also had a practice of failing to schedule meal periods, which further caused Mr. Alvarez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Alvarez worked through his meal periods approximately once per week in order to keep up with customer demand and complete his duties. 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 Mr. Alvarez 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, Mr. Alvarez and other aggrieved employees were required to work through and had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Moreover, because CEC frowned upon employees accruing meal period penalties, CEC pressured employees to clock out for meal periods, even when they did not receive a compliant meal period. Consequently, Mr. Alvarez and other aggrieved employees performed work during meal periods for which they were not paid. Alternatively, on information and belief, CEC's timekeeping system prevented Mr. Alvarez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Alvarez 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 until 30 minutes had elapsed. Thus, CEC's timekeeping policies and system further prevented Mr. Alvarez and other aggrieved employees from recording all hours worked when their meal periods were missed, shortened, and/or interrupted.

CEC knew or should have known that as a result of these company-wide practices and/or policies, Mr. Alvarez and other aggrieved employees were performing assigned duties off-the-clock after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Alvarez and other aggrieved employees 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.

Furthermore, CEC did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, on information and belief, CEC paid 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 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 Mr. Alvarez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Alvarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated above, CEC had a company-wide policy and/or practice requiring Mr. Alvarez and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including waiting for a managerial or keyholder employee to arrive and open CEC’s restaurants, waiting to clock in because the timekeeping system had locked them out, repairing arcade machines after clocking out, and waiting to leave the premises in pairs. Thus, CEC failed to track this time Mr. Alvarez and other aggrieved employees spent working off-the-clock, and Mr. Alvarez and other aggrieved employees received no compensation for this time.

Additionally, as set forth above, due to CEC’s uniform use of labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Alvarez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Furthermore, as stated above, in order to limit meal penalties that CEC would otherwise owe, CEC pressured Mr. Alvarez and other aggrieved employees to clock out for meal periods, even when they did not receive a compliant meal period. Alternatively, as set forth above, on information and belief, CEC systematically failed to pay Mr. Alvarez and other aggrieved employees for actual hours worked during unpaid meal periods, because CEC’s timekeeping system locked out Mr. Alvarez and other aggrieved employees for 30 minutes when they clocked out for a meal period. Combined, these practices prevented Mr. Alvarez and other aggrieved employees from recording all hours worked when their meal periods were missed, shortened, and/or interrupted, time for which they were not paid.

Thus, CEC did not pay at least minimum wages for all hours worked by Mr. Alvarez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CEC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at

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

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

As stated above, CEC had, and continues to have, company-wide policies and/or practices of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Alvarez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Alvarez 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, Mr. Alvarez was required to take his meal period late, after having worked in excess of five (5) hours into his shift, due to the lack of coverage and in order to meet CEC's expectations.

Additionally, as stated, because CEC frowned upon employees accruing meal period penalties, CEC's management pressured Mr. Alvarez and other aggrieved employees to clock out for meal periods, regardless of whether they had received a compliant meal period. For example, Mr. Alvarez was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods.

Furthermore, as stated, CEC's company-wide timekeeping system prevented Mr. Alvarez and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Alvarez 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. For example, about three (3) times per month, Mr. Alvarez's meal periods were interrupted and shortened by 5-10 minutes in order to assist his coworkers with repairing arcade game machines and to keep up with customer demand.

Moreover, CEC did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Alvarez 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.

CEC knew or should have known that as a result of its policies and practices, Mr. Alvarez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. CEC further knew or should have known that it did not pay Mr. Alvarez and other

aggrieved employees all meal period premiums when meal periods were missed, late, short, and/or interrupted.

Furthermore, 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, Mr. Alvarez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that CEC did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, CEC did not pay 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. Mr. Alvarez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, CEC regularly failed to authorize and permit Mr. Alvarez 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 practices of labor budgeting and/or limited payroll allocation, understaffing, and assignment of heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Alvarez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, CEC also failed to schedule rest periods, which, coupled with CEC's failure to provide adequate rest period coverage, further led to Mr. Alvarez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, CEC maintained a company-wide on-premises rest period policy, which mandated that Mr. Alvarez and other aggrieved employees remain on CEC's premises

during their rest periods. Because Mr. Alvarez 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 Mr. Alvarez and other aggrieved employees during rest periods.

As a result, Mr. Alvarez and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, approximately five (5) to eight (8) times during his employment, Mr. Alvarez had to forego his rest periods because the restaurant was busy, did not have coverage, and there was an expectation for all employees to work through their rest periods. When Mr. Alvarez was finally able to take his rest periods, they were often interrupted in order to assist with cleaning tables or repairing arcade game machines.

CEC has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because CEC frowned upon employees accruing rest period penalties, CEC pressured Mr. Alvarez and other aggrieved employees to falsify the time rest periods were taken and/or adjusted employee records to reflect compliant and/or timely rest periods, regardless of whether Mr. Alvarez and other aggrieved employees had received a compliant rest period at that time or not, in order to strictly limit rest period penalties that CEC would otherwise owe. Moreover, CEC's company-wide timekeeping system prevented Mr. Alvarez and other aggrieved employees from recording when their rest periods were shortened or interrupted, because the system locked out Mr. Alvarez and other aggrieved employees once they "clocked out" for a rest period, and would not permit them to "clock back in" from a rest period before 10 minutes had elapsed.

CEC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Alvarez and other aggrieved employees have not received all premium pay for missed rest periods. Alternatively, to the extent that CEC did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CEC did not pay 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. Mr. Alvarez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. 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 Mr. Alvarez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CEC issued uniform wage statements to Mr. Alvarez 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 Mr. Alvarez 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 Mr. Alvarez 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 Mr. Alvarez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because CEC did not calculate 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 also 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 the hours they 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 Mr. Alvarez 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, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Alvarez and other aggrieved employees in violation of section 1198. Furthermore, in light of CEC’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, CEC kept no records of meal start and end times for second meal periods.

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, Mr. Alvarez 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, Mr. Alvarez 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.

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

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

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

During the relevant time period, CEC failed to pay Mr. Alvarez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

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

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

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

CEC willfully failed to pay Mr. Alvarez and other aggrieved employees who are no longer employed by CEC all their earned wages, 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.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

CEC's California restaurants are generally similar in their layout and design and there was, and continues to be, space behind host stands, such as the Kid Check stand, to allow for the presence and use of a seat or stool by other Mr. Alvarez and aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. CEC could provide Mr. Alvarez and other aggrieved employees with a seat or stool at its host stands, but instead denies employees seating and forces Mr. Alvarez and other aggrieved employees to stand throughout the day.

Mr. Alvarez and other aggrieved employees spent a substantial portion of their day behind or at these host stands. The nature of the work of an employee performing host duties at host stands can reasonably be accomplished from a seated position. However, as set forth herein, CEC systematically, and on a company-wide basis, does not provide seats or stools at or near the host stands, forcing Mr. Alvarez and other aggrieved employees to stand throughout their work shifts.

CEC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(14)(A) because Mr. Alvarez and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. CEC's management did not inform Mr. Alvarez and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of CEC's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Alvarez and other aggrieved employees were forced to stand during shifts and denied seats. CEC's failure to provide suitable seating to Mr. Alvarez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(A).

Mr. Alvarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CEC into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11050(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

The IWC states that subdivision 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during "lulls in operation." *Id.*

CEC's California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Alvarez and other aggrieved employees during lulls in operation. CEC could have provided Mr. Alvarez and other aggrieved employees with

a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

CEC did not provide Mr. Alvarez and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Alvarez and other aggrieved employees engaged in duties in which the nature of the work required standing, CEC denied them the use of seats nearby during lulls in their work duties. Moreover, CEC did not inform Mr. Alvarez and other aggrieved employees of their rights to a seat or stool under California law.

As a result of CEC's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Alvarez and other aggrieved employees were forced to stand during shifts and denied seats. CEC's failure to provide suitable seating to Mr. Alvarez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 5-2001, subdivision 14(B).

Mr. Alvarez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring CEC into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Mr. Alvarez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Alvarez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, 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, and 1198.

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

Pre-Litigation Demand

This notice shall further serve as Mr. Alvarez's reasonable attempt to settle his dispute with CEC prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform CEC of Mr. Alvarez's aforementioned grievances and the proposed remedies as detailed below, while affording CEC a reasonable opportunity to satisfy Mr. Alvarez's demands.

Demand is hereby made that CEC shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. CEC shall pay Mr. Alvarez and all other aggrieved employees employed by CEC at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. CEC shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. CEC shall conduct a survey or interview all current and former aggrieved employees in California who worked for CEC in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; and the number of rest periods which were not authorized and permitted, with the investigation to be completed within 60 days.
4. CEC shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. CEC also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. CEC shall pay accrued legal interest to Mr. Alvarez and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
6. CEC shall provide Mr. Alvarez and all aggrieved employees employed by CEC at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
7. CEC shall implement and provide suitable seating to all aggrieved employees.
8. CEC shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. CEC shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 5-2001, section 20.

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

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

Best Regards,

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

Alexander Lima

Copy: CEC ENTERTAINMENT, LLC (via U.S. Certified Mail); CEC ENTERTAINMENT, INC.
(via U.S. Certified Mail)

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



7022 2410 0000 2406 3515

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

SENDER: COMPLETE THIS SECTION

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

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



2. A96600-044021/P06/20122/K8/20-918

7022 2410 0000 2406 3515

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

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

Service Type

- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
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- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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- ☐ Signature Confirmation Restricted Delivery

attached Delivery

Domestic Return Receipt

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Certified Mail Fee

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

- ☐ Return Receipt (hardcopy)
- ☐ Return Receipt (electronic)
- ☐ Certified Mail Restricted Delivery

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

7022 2410 0000 2406 3515

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



7022 2410 0000 2406 3508

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

SENDER: COMPLETE THIS SECTION

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

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

COMPLETE THIS SECTION ON DELIVERY

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

D. Is delivery address different from item 12? ☐ Yes
If YES, enter delivery address below: ☐ No

2. 14858019440 2171406124122 14328481



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

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Certified Mail Fee	\$	Signature
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☐ Return Receipt (electronic)	\$	
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CEC ENTERTAINMENT, INC.
1707 MARKET PL STE 200
IRVING, TX 75063

7022 2410 0000 2406 3508

SENDER: COMPLETE THIS SECTION

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

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



2. Article Number (Transfer from Service Label)

7022 2410 0000 2406 3515

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x D. Wash 6377

☐ Agent☒ Addressee

B. Received by (Printed Name)

Covid-19

C. Date of Delivery

10/31

Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☒ No

Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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

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



2. Article Number (Transfer from Service Label)

7022 2410 0000 2406 3508

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x D. Wash 6377

☐ Agent☒ Addressee

B. Received by (Printed Name)

Covid-19

C. Date of Delivery

10/31

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

Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

EXHIBIT “2”

LAW OFFICES OF
LAVI & EBRAHIMIAN, LLP
8889 W. OLYMPIC BLVD., SUITE 200
BEVERLY HILLS, CALIFORNIA 90211
TELEPHONE: (310) 432-0000
FACSIMILE: (310) 432-0001
WWW.LELAWFIRM.COM

March 22, 2024

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To: California Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
Via Online Submission Only

<u>CEC ENTERTAINMENT, LLC</u> CA Registered Agent for Process Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833 <u>Certified No.:</u> 9589 0710 5270 0415 3828 35	<u>CEC ENTERTAINMENT, LLC</u> Attn.: Legal Department 1707 Market Place Boulevard, Suite 200 Irving, TX 75063 <u>Certified No.:</u> 9589 0710 5270 0415 3825 69
<u>CEC ENTERTAINMENT, LLC</u> Attn.: Legal Department 3737 East Foothill Boulevard Pasadena, CA 91107 <u>Certified No.:</u> 9589 0710 5270 0415 3828 42	

From: STACEY VELAZQUEZ, on behalf of herself and all other current and former aggrieved California-based hourly non-exempt employees of CEC ENTERTAINMENT, LLC.

c/o Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Win Pham, Esq.
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
wpham@lelawfirm.com

Our firm has been retained by aggrieved employee STACEY VELAZQUEZ concerning a representative action pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA") against her employers, CEC ENTERTAINMENT, LLC.

We are filing this written notice with the Labor and Workforce Development Agency ("LWDA") pursuant to the provisions of the California Labor Code Sections 2699, 2699.3, and 2698, *et seq.* The purpose of this letter is to inquire whether LWDA intends to investigate and seek civil penalties associated with my client's allegations of violations of the Labor Code by her Employer. In addition to submitting this letter and the \$75.00 filing fee via the online PAGA filing system, I am causing a copy of this letter to be mailed to the Department of Industrial Relations – Accounting Unit.

FACTUAL STATEMENT AND THEORIES OF LABOR CODE VIOLATIONS

Aggrieved employee STACEY VELAZQUEZ ("Employee") was employed by CEC ENTERTAINMENT, LLC ("Defendants" or "Employers") as an hourly non-exempt employee from in or around March 2018 until on or about currently.

1. Failure to Pay the Minimum Wage Rate of Pay for All Hours Worked

Employee alleges that during her employment, Employer failed to pay her and other current and former aggrieved California-based hourly non-exempt employees with compensation at the minimum wage rate of pay for all the hours that they worked in violation of Labor Code sections 1194 and 1197. Labor Code section 1197 provides, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Labor Code section 1194 states, "...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."

Employee alleges that during her employment, Employer failed to pay her and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Employer's policies, practices, and/or procedures including, but not limited to:

- requiring Employee and other current and former aggrieved California-based hourly non-exempt employees who worked closing shifts required to perform closing procedures including, but not limited to, locking Employer's stores after clocking out for the end of their shift without being paid for that time.

Employee and other current and former aggrieved California-based hourly non-exempt employees were not paid for this time resulting in Employer's failure to pay minimum wage for all the hours Employee and other current and former aggrieved California-based hourly non-exempt employees worked.

Employer's aforementioned policies, practices, and/or procedures resulted in time each day in which Employee and other current and former aggrieved California-based hourly non-exempt employees were subject to the control of Employer without being compensated for that time.

Based on these violations, Employee intends to seek civil penalties pursuant to the Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.*, and Labor Code section 1197.1, subdivisions (a)(1)-(2), on behalf of the Labor and Workforce Development Agency ("LWDA") against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer's failure to pay wages at a minimum wage rate for all hours worked, Employee will also seek civil penalties for Defendant's violations of Labor Code section 226(a) under Labor Code sections 226.3 and/or 2699(f)(2) because the failure to pay such minimum wages for all hours worked rendered Employee's and other current and former aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and resulted in their wage statements being inaccurate with respect to gross wages earned, total hours worked, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code sections 226(a)(1, 2, 5 & 9).

2. Failure to Pay Overtime Wages for Overtime Hours Work

Employee alleges that during her employment, Employer failed to pay her and other current and former aggrieved California-based hourly non-exempt employees for the overtime hours that they worked at their overtime rate of pay.

Labor Code section 510, subdivision (a), states in relevant part:

"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."

Further, Labor Code section 1198 provides,

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 1194 provides, "...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."

Employee alleges that during her employment, Employer failed to pay her and other current and former aggrieved California-based hourly non-exempt employees overtime wages for overtime hours worked due to Employer's policies, practices, and/or procedures including, but not limited to:

- requiring Employee and other current and former aggrieved California-based hourly non-exempt employees who worked closing shifts required to perform closing procedures including, but not limited to, locking Employer's stores after clocking out for the end of their shift without being paid for that time.

Employee and other current and former aggrieved California-based hourly non-exempt employees were not paid for this time resulting in Employers' failure to pay minimum wage for all the hours Employee and other current and former aggrieved California-based hourly non-exempt employees worked.

Employer's aforementioned policies, practices, and/or procedures resulted in time each day in which Employee and other current and former aggrieved California-based hourly non-exempt employees were subject to the control of Employer without being compensated for that time. To the extent that the foregoing unpaid time resulted from Employee and other current and former aggrieved California-based hourly non-exempt employees being subject to the control of Employer when they worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek, Employer failed to pay them at their overtime rate of pay for all the overtime hours they worked.

Employer's foregoing policies, practices, and/or procedures resulted in Employer failing to pay Employee and other current and former aggrieved California-based hourly non-exempt employees at their overtime rate of pay for all overtime hours worked, in violation of Labor Code sections 510, 1194, 1198, and the Wage Order.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, under Labor Code sections 2699(f)(2) and 558, subdivisions (a)(1)-(2) on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer's failure to pay overtime wages at the lawful overtime rate for all overtime hours worked, Employee will also seek civil penalties for Defendant's violations of Labor Code section 226(a) under Labor Code sections 226.3 and/or 2699(f)(2) because the failure to pay such overtime wages for all overtime hours worked rendered Employee's and other current and former aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and resulted in their wage statements being inaccurate with respect to gross wages earned, total hours worked, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code sections 226(a)(1, 2, 5 & 9).

3. Failure to Authorize or Permit Meal Periods and/or Failure to Pay Meal Period Premiums in Violation of Labor Code Sections 512 and 226.7

Employee alleges that during her employment, Employer failed to authorize or permit all legally required and compliant meal periods and/or pay meal period premiums. California law requires an employer to provide an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code §§226.7, 512; Wage Order 5, §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code §226.7; Wage Order 5, §11.

Employee alleges that Employer failed to authorize or permit her and other current and former aggrieved California-based hourly non-exempt employees to take all legally required and compliant meal periods due to Employer's policies, practices, and/or procedures including, but not limited to, the following

- Due to chronic understaffing, Employee and other current and former aggrieved California-based hourly non-exempt employees were required to clock out for their meal breaks and continue to work through their off-the-clock meal breaks

Additionally, Employee alleges that Employer maintained a policy, practice, and/or procedure whereby they failed to pay Employee and other current and former aggrieved California-based hourly non-exempt employees a meal period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday that they did not receive all legally required and compliant meal periods, in violation of Labor Code section 226.7 and Wage Order 5 at § 11.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, under Labor Code sections 558 and/or Labor Code section 2699(f)(2) on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer's failure to authorize or permit all legally required and compliant meal periods and/or failure to pay meal period premium wages, Employee will also seek civil penalties for Defendant's violations of Labor Code section 226(a) under Labor Code sections 226.3 and/or 2699(f)(2) because the failure to pay meal period premiums and/or pay meal period premiums at the proper regular rate of pay rendered Employee's and other current and former aggrieved California-based hourly non-exempt employees' pay

calculations inaccurate and resulted in their wage statements being inaccurate with respect to gross and net wages earned, in violation of Labor Code sections 226(a)(1 & 5).

4. Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7 and/or Failure to Pay Rest Period Premiums

Employee alleges that during her employment, Employer failed to authorize or permit all legally required and compliant rest periods and/or failed to pay rest period premiums. California law requires 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. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...” Wage Order 5, § 12. “Employees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement “obligates Employer to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257, 269. That is, during rest periods an employer must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If the employer fails to authorize or permit a required rest period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage Order 5 at § 12.

Employee alleges that Employer failed to authorize or permit her and other current and former aggrieved California-based hourly non-exempt employees to take all legally required and compliant rest periods due to Employer’s policies, practices, and/or procedures including, but not limited to, the following:

- Due to chronic understaffing, Employee and other current and former aggrieved California-based hourly non-exempt employees were required to continue to work through their rest breaks.
- Discouraging off-premises rest breaks by requiring Employee and other current and former aggrieved California-based hourly non-exempt employees to clock out for rest breaks if they wished to leave the premises for their rest breaks.

Additionally, Employee alleges that Employer maintained a policy, practice, and/or procedure whereby they failed to pay Employee and other current and former aggrieved California-based hourly non-exempt employees a rest period premium wage of one (1) additional hour of pay at their regular rate of compensation for each workday that they did not receive all legally required and compliant rest periods, in violation of Labor Code section 226.7 and Wage Order 5 at § 12.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, under Labor Code section 2699(f)(2), on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employer’s failure to authorize or permit all legally required and

compliant rest periods and/or failure to pay rest period premium wages, Employee will also seek civil penalties for Defendant's violations of Labor Code section 226(a) under Labor Code sections 226.3 and/or 2699(f)(2) because the failure to pay rest period premiums and/or pay rest period premiums at the proper regular rate of pay rendered Employee's and other current and former aggrieved California-based hourly non-exempt employees' pay calculations inaccurate and resulted in their wage statements being inaccurate with respect to gross and net wages earned, in violation of Labor Code sections 226(a)(1 & 5).

5. Failure to Timely Pay Earned Wages During Employment in Violation of Labor Code Section 204

Employee alleges that during her employment, Employer failed to timely pay Employee's and other current and former aggrieved California-based hourly non-exempt employees' earned wages. In California, wages must be paid at least twice during each calendar month on days designated in advance by the employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7) calendar days following the close of the payroll period in which wages were earned. Labor Code §204(d).

As a derivative of Employee's claims above, Employee alleges that Employer failed to timely pay her and other current and former aggrieved California-based hourly non-exempt employees' earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), in violation of Labor Code section 204. Employer's aforementioned policies, practices, and/or procedures resulted in Employer failing to pay Employee and other current and former aggrieved California-based hourly non-exempt employees their earned wages within the applicable time frames outlined in Labor Code 204.

Based on these violations, Employee intends to seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, on behalf of LWDA against Employer if authorized to file a representative action on behalf of the State of California.

6. Failure to Provide Accurate Wage Statements

Labor Code section 226(a) states that "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee...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 her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer...and (9) all applicable hourly

rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....”

Employee alleges that as a derivative of Employee’s claims above, Employer failed to provide accurate wage and hour statements to Employee and other current and former aggrieved California-based hourly non-exempt employees who were subject to Employer’s control for uncompensated time and who did not receive all their earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages), as such failures rendered Employee’s and other current and former aggrieved California-based hourly non-exempt employees’ pay calculations inaccurate and resulted in their wage statements being inaccurate with respect to gross wages earned, total hours worked, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code sections 226(a)(1, 2, 5 & 9).

Based on these violations, Employee will seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, under Labor Code section 226.3 and/or Labor Code section 2699(f)(2) on behalf of LWDA, against Employer if authorized to file a representative action on behalf of the State of California.

7. Failure to Timely Pay Final Wages

Labor Code section 201(a) states that “[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(a) continues, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter....” Finally, Labor Code section 203(a) provides, “[i]f an employer willfully fails to pay...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 therefor is commenced; but the wages shall not continue for more than 30 days....”

As a result of the aforementioned violations of the Labor Code, Employee alleges that she was not paid her final wages in a timely manner as required by Labor Code section 203. Earned wages (including minimum wages, overtime wages, meal period premium wages, and/or rest period premium wages) (all described above), were not paid at the time of Employee’s separation of employment. Employee is informed and believes and thereon alleges that former aggrieved California-based hourly non-exempt employees who separated from Employer, whether voluntarily or involuntarily, were not paid all wages due in a timely manner, as required by Labor Code sections 201, 202, and 203.

Based on these violations, Employee will seek civil penalties pursuant to PAGA, Labor Code sections 2698, *et seq.*, under Labor Code section 2699(f)(2) on behalf of LWDA, against Employer if authorized to file a representative action on behalf of the State of California.

8. Employer's Other Violations of the California Labor Code

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 (“*Huff*”), as an aggrieved employee, Employee has standing, and intends, on behalf of LWDA, to pursue civil penalties against Employer for any and all other Labor Code violations committed by Employer. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the Labor Code under PAGA may also bring PAGA claims against the employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Employee, as an “aggrieved” employee affected by at least one Labor Code violation may, and hereby does, pursue penalties on behalf of LWDA for unrelated Labor Code violations by Employer.

CONCLUSION

Our client intends to file a representative action pursuant to PAGA concerning her wage claims as warranted by Employer's violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and sections 3, 4, 11 and 12 of the applicable IWC Wage Orders. This letter is being sent to you as an inquiry into whether LWDA wishes to investigate my client's claims for civil penalties associated with Employer's violations of the Labor Code, as alleged herein. Thank you for your assistance and cooperation in this matter. If you have any questions or concerns, please contact me at the above-listed information.

Very truly yours,
LAVI & EBRAHIMIAN, LLP



Win Pham, Esq.

EXHIBIT “3”



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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

CEC’s Company-Wide and Uniform Payroll and HR Practices

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.

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

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

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

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 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).

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

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

During the relevant time period, 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

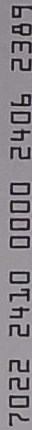
Best Regards,



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)

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☒ Agent

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☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



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David A. Garcia, Esq.
Ogletree Deakins
Park Tower, 695 Town Center
Drive, Fifteenth Floor
Costa Mesa, CA 92626

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David A. Garcia, Esq.
Ogletree Deakins
Park Tower, 695 Town Center
Drive, Fifteenth Floor
Costa Mesa, CA 92626



2. A 7022 2410 0000 2406 2396
PS Form 3811, July 2020 PSN 7530-02-000-9053

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Ogletree Deakins
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Drive, Fifteenth Floor
Costa Mesa, CA 92626

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

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1860 Los Angeles, California 90067.

On **May 28, 2026**, I served the document described as **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Leo Q. Li
lli@seyfarth.com
Romtin Parvaresh
rparvaresh@seyfarth.com
John T. Ayers-Mann
jayers-mann@seyfarth.com
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, California 90067-3021

Attorneys for Defendants
CEC ENTERTAINMENT, LLC

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

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

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

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **May 28, 2026**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature