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October 17, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/310>)

Subject: *Mercedes Marin v. NAKC, Inc.*
LWDA Case No. LWDA-CM-1044678-24 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Mercedes Marin in connection with her claims under the California Labor Code. Ms. Marin was an employee of NAKC, INC. (“NAKC”). We previously provided notice of Ms. Marin’s claims to the California Labor and Workforce Development Agency (“LWDA”) on August 9, 2024, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Ms. Marin’s prior LWDA notice and is intended to clarify the facts and theories supporting her claims.

The employer may be contacted directly at the address below:

NAKC, INC.
5120 MONETTA LANE
SACRAMENTO, CA 95835

Ms. Marin 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. Marin seeks relief on behalf of herself, the State of California, and other persons who are or were employed by NAKC 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.

NAKC employed Ms. Marin as an hourly paid, non-exempt employee from approximately July 2022 to April 2024. Ms. Marin worked as a Crew Member at NAKC’s McDonald’s restaurant located in West Sacramento, California. Ms. Marin typically worked eight (8) hours or more per day, and four (4) days or more per week. At the time Ms. Marin’s employment ended with NAKC, she was compensated approximately \$20.00 per hour. Ms. Marin’s primary job duties as a Crew Member

included, without limitation, taking customer orders; preparing and cooking food; and cleaning the restaurant, dining area, and kitchen.

NAKC committed each of the following Labor Code violations against Ms. Marin, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

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

NAKC, INC. is a California corporation operating at least eight (8) McDonald’s restaurant franchise locations in California. Upon information and belief, NAKC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Sacramento, California, for all non-exempt, hourly paid employees working for NAKC in California, including Ms. Marin and other aggrieved employees. At all relevant times, NAKC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Marin and other aggrieved employees, regardless of their location or position.

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

NAKC willfully failed to pay all overtime wages owed to Ms. Marin and other aggrieved employees. During the relevant time period, Ms. Marin and other aggrieved employees were not paid overtime

¹ These facts, theories, and claims are based on Ms. Marin’s experience and counsel’s review of those records currently available relating to Ms. Marin’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. Marin reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, NAKC had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Marin and other aggrieved employees from recording hours worked that were outside their scheduled shifts, which caused Ms. Marin and other aggrieved employees to perform work-related tasks while off-the-clock, before their scheduled shift times. For example, Defendants implemented a timekeeping system that prevented employees from clocking in about 10 minutes before or after their scheduled shift start-times. As a result, Plaintiff and other aggrieved employees were sometimes forced to wait off-the-clock for a manager to authorize them to clock in. For instance, Plaintiff was required to wait up to five (5) minutes, four (4) times a month under Defendants' control while she waited for a manager to authorize her to clock in, time for which she was not paid.

Second, NAKC had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Marin and other aggrieved employees from recording hours worked that were outside their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with NAKC's practices of understaffing and assigning heavy workloads (*see infra*), led Ms. Marin and other aggrieved employees to work off-the-clock after their scheduled shift times. For example, three (3) times per week, Ms. Marin was required to clock out at her scheduled shift end-time and continue working, washing dishes, cleaning kitchen equipment, and restocking inventory.

Moreover, Ms. Marin and other aggrieved employees were required to complete mandatory online training sessions, but NAKC did not permit them to complete the training during their shifts. For example, Ms. Marin was required to complete training sessions off the clock, watching videos on food preparation, sanitation, and company policies, at least twice for about one (1) hour each time. Additionally, approximately once per week, NAKC's managers called Ms. Marin on her personal cellular phone, on her off-days, to discuss kitchen equipment and recipes. Thus, NAKC failed to track the time employees spent working off the clock, and Ms. Marin and other aggrieved employees received no compensation for this time.

Third, NAKC 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 the corporate office. On information and belief, NAKC's uniform use of labor budgeting and understaffing resulted in a failure to provide Ms. Marin and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. NAKC also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Marin and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Marin would work through part of her meal periods to assist coworkers with kitchen equipment and prepare McCafé frappes, McFlurries, and other specialty menu items. Thus, Ms. Marin and other aggrieved employees worked through meal periods and/or had their meal periods interrupted or cut short, and NAKC did not pay Ms. Marin and other aggrieved employees for the time they continued to perform tasks during meal periods.

Fourth, NAKC had, and continues to have, a policy and/or practice of requiring that Ms. Marin and other aggrieved employees carry and respond to company-issued headsets. As a result, NAKC's management contacted Ms. Marin and other aggrieved employees on their company-issued headsets

during unpaid meal periods. Ms. Marin would also respond to customer requests during her meal periods, due to the lack of coverage. NAKC knew or should have known that Ms. Marin and other aggrieved employees were performing work while off-the-clock in order to meet NAKC's expectations, but failed to compensate them for this time.

Fifth, on information and belief, because NAKC frowned upon employees accruing meal period premiums, NAKC's management adjusted Ms. Marin and other aggrieved employees time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal period premiums that NAKC would otherwise owe. Consequently, Ms. Marin and other aggrieved employees performed work during meal periods for which they were not paid.

NAKC knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Marin 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. Marin 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. Therefore, Ms. Marin and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, NAKC did not pay Ms. Marin 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, NAKC paid Ms. Marin and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, NAKC 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. Marin and/or other aggrieved employees worked overtime and received these other forms of pay, NAKC failed to pay all overtime wages by paying a lower overtime rate than required.

For example, NAKC paid Ms. Marin and/or other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Ms. Marin's and/or other aggrieved employees' wage statements as "Bonus." During the pay periods that Ms. Marin and/or other aggrieved employees were paid overtime wages, NAKC did not incorporate these payments into Ms. Marin's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, NAKC paid Ms. Marin and/or other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. NAKC's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Marin and/or other aggrieved employees on a company-wide basis.

NAKC's failure to pay Ms. Marin 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. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, 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”).

First, as set forth above, due to NAKC’s implementation of a timekeeping system that prevented employees from clocking in outside of their scheduled shift start-times, Ms. Marin and other aggrieved employees were prevented from recording the entire time worked while they waited for a manager to authorize them to clock in. Also as stated above, as a result of NAKC’s company-wide policies and/or practices of restricting overtime accrual, Ms. Marin and other aggrieved employees were required to perform work after their scheduled shift times, while off-the-clock, including, but not limited to, washing dishes, cleaning kitchen equipment, and restocking inventory. Additionally, as stated, NAKC required Ms. Marin and other aggrieved employees to complete mandatory training sessions and communicate with management on their personal mobile devices outside of their scheduled shifts. NAKC failed to track this time Ms. Marin and other aggrieved employees spent working off-the-clock, and Ms. Marin and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to NAKC’s uniform practices of utilizing labor budgets, understaffing its restaurant locations, assigning heavy workloads, and failing to adhere to a schedule for meal periods, Ms. Marin 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. Moreover, as stated, NAKC required employees to carry and use their company-issued headsets to communicate with management during unpaid meal periods. Additionally, as stated, on information and belief, because NAKC frowned upon employees accruing meal period premiums, NAKC’s managers adjusted Ms. Marin’s and other aggrieved employees’ time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, NAKC systematically failed to pay Ms. Marin and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

NAKC did not pay at least minimum wages for all hours worked by Ms. Marin and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, NAKC 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, NAKC regularly failed to pay at least minimum wages to Ms. Marin 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. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, 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.

First, as stated above, NAKC had, and continues to have, company-wide policies and/or practices of understaffing its restaurant locations while utilizing labor budgets, which, combined with assignment of heavy workloads and failure to adhere to a schedule for meal periods, resulted in a lack of meal period coverage and prevented Ms. Marin and other aggrieved employees from taking all compliant meal periods. As a result, Ms. Marin 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, Ms. Marin had her meal periods interrupted or cut short three (3) times per month due to the restaurant being busy and coworkers needing assistance to prepare orders. Thus, NAKC failed to provide Ms. Marin and other aggrieved employees with compliant, 30-minute meal periods.

Second, as stated, NAKC had, and continues to have, a company-wide policy and/or practice of requiring that Ms. Marin and other aggrieved employees carry a company-issued headsets to respond to requests including during meal periods. As a result, NAKC's management contacted Ms. Marin and other aggrieved employees on their company-issued headsets during unpaid meal periods and Ms. Marin would also respond to customer requests during her meal periods, due to the lack of coverage.

Third, as stated, on information and belief, because NAKC frowned upon employees accruing meal period premiums, NAKC's managers adjusted Ms. Marin's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. As a result, NAKC falsified and deducted meal periods from Ms. Marin'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. Ms. Marin and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, NAKC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. NAKC took the position that non-exempt, hourly paid employees had waived their rights to first meal periods for the entirety of their employment and,

on that basis, did not provide them with all meal periods to which they were entitled. Further, NAKC's "Meal Period Waiver" form requires employees to provide written notice should they wish to revoke the waiver. NAKC's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Ms. Marin and other aggrieved employees from taking all meal periods to which they were entitled.

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

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

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

At all times mentioned herein, NAKC knew or should have known that as a result of its policies, Ms. Marin and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. NAKC further knew or should have known that it did not pay Ms. Marin and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, NAKC engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. Marin and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that NAKC did pay Ms. Marin and/or other aggrieved employees for missed, late, and interrupted meal periods, NAKC did not pay Ms. Marin and/or other aggrieved employees at the correct rate of pay for premiums because NAKC 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, NAKC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, 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, NAKC regularly failed to authorize and permit Ms. Marin 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, NAKC's company-wide policies of understaffing and assigning heavy workloads prevented Ms. Marin and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. NAKC also failed to adhere to a schedule for rest periods, which, coupled with NAKC's failure to provide adequate rest period coverage, further led to Ms. Marin and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, NAKC maintained a company-wide on-premises rest period policy, which effectively required that Ms. Marin and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. Marin and/or 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, NAKC effectively maintained control over Ms. Marin and/or other aggrieved employees during rest periods.

As a result of NAKC's practices and policies, Ms. Marin 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. Marin's rest periods were interrupted three (3) times a week to deliver curbside orders or assist in the kitchen.

NAKC 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. Marin and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that NAKC did pay Ms. Marin and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, NAKC did not pay Ms. Marin and/or other aggrieved employees at the correct rate of pay for premiums because NAKC 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, NAKC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, 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. NAKC has not provided Ms. Marin 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, NAKC has knowingly and intentionally provided Ms. Marin and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, NAKC issued uniform wage statements to Ms. Marin and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, NAKC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because NAKC did not record the time Ms. Marin and other 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), NAKC did not list the correct amount of gross wages and net wages earned by Ms. Marin and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, NAKC failed to accurately list the total number of hours worked by Ms. Marin 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).

Furthermore, because NAKC did not calculate Ms. Marin's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, NAKC 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). NAKC 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” At all relevant times, and in violation of Labor Code section 1174(d), NAKC willfully failed to maintain accurate payroll records for Ms. Marin 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, NAKC 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 of 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. Marin and other aggrieved employees, in violation of section 1198.

Because NAKC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Marin 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. Marin 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. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, 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, NAKC willfully failed to pay Ms. Marin and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Ms. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with Labor Code section 204, 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.

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

Ms. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The

“primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, NAKC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because NAKC failed to pay Ms. Marin and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

On information and belief, NAKC had a company-wide practice of sending Ms. Marin and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Marin and other aggrieved employees for half of their usual or scheduled shift. For example, during her employment, NAKC’s managers sent Ms. Marin home before she had an opportunity to work at least half of her scheduled shift because business was slow, but on information and belief, Ms. Marin was only paid for the time he had worked. Although Ms. Marin and other aggrieved employees would report to work based on the schedule that NAKC provided to them, NAKC would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, Ms. Marin and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A).

Ms. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 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 be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 5-2001 further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, NAKC, on a company-wide basis, required that Ms. Marin and other aggrieved employees use their own 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 expenses. For example, Ms. Marin used her personal cellular phone to communicate with managers regarding kitchen equipment, scheduling, and other

work-related tasks. Although NAKC required Ms. Marin and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities NAKC failed to reimburse them for this cost.

Second, during the relevant time period, NAKC expected Ms. Marin and other aggrieved employees to report to work in clean and presentable uniforms bearing the McDonald's logo, including a uniform shirt and hat. Due to the nature of restaurant work, Ms. Marin's and other aggrieved employees' uniform items would become stained with grease, oil, soiled, and/or acquire an unpleasant odor such that they were unable to mix these clothes in with other laundry. As a result, Ms. Marin had to wash her uniform items separately from her regular clothing, thus incurring additional utility and laundry expenses for the upkeep of her uniforms. Thus, NAKC failed to maintain the uniforms it required Ms. Marin and other aggrieved employees to wear during their shifts and forced them to incur the costs of maintaining employee uniforms.

NAKC could have provided Ms. Marin and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and access to laundering services. Or, NAKC could have reimbursed employees for the costs of their mobile device usage, and laundering expenses or provided a uniform maintenance allowance. Instead, NAKC passed these operating costs off onto Ms. Marin and other aggrieved employees. At all relevant times, Ms. Marin and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, NAKC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and on their operating costs to Ms. Marin and other aggrieved employees in violation of California Labor Code section 2802. Ms. Marin and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NAKC into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 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.” NAKC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Marin's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Marin 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 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Marin, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against NAKC 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, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Marin 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:

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

Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is written in a cursive, flowing style with a small dot at the end.

Sairah Budhwani

Copy: NAKC, INC. (via U.S. Certified Mail)

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



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