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Attorneys for Plaintiffs KAREN LOPEZ and FRAY  
ORTEGA, individually, and on behalf of all others  
similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

KAREN LOPEZ; FRAY ORTEGA, as  
individuals, on behalf of themselves and all  
others similarly situated and aggrieved,

Plaintiffs,

vs.

NORWALK 939 INC. dba IHOP, a California  
Corporation; ASH HOP INC. dba IHOP, a  
California Corporation; ASH HOP II INC. dba  
IHOP, a California Corporation; ASH HOP  
III, INC. dba IHOP, a California Corporation;  
and DOES 1 through 25, inclusive,

Defendants.

Case No.: **24STCV26358**

**CLASS ACTION & PAGA REPRESENTATIVE  
ACTION COMPLAINT**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO PROVIDE REST BREAKS;**
- (3) FAILURE TO PAY MINIMUM WAGES;**
- (4) FAILURE TO PAY OVERTIME WAGES;**
- (5) FAILURE TO REMIT ALL GRATUITIES;**
- (6) FAILURE TO FURNISH TIMELY AND  
ACCURATE WAGE STATEMENTS;**
- (7) FAILURE TO PAY ALL WAGES UPON  
SEPARATION;**
- (8) FAILURE TO REIMBURSE ALL  
NECESSARY, BUSINESS-RELATED  
EXPENSES;**
- (9) VIOLATION OF CALIFORNIA'S UNFAIR  
COMPETITION LAW ("UCL"), CAL. BUS.  
& PROF. CODE § 17200, *ET SEQ.*; AND**
- (10) CIVIL PENALTIES FOR VIOLATIONS  
OF LABOR CODE, PURSUANT TO  
CALIFORNIA'S PRIVATE ATTORNEYS  
GENERAL ACT ("PAGA"), §§ 2698, *ET  
SEQ.***

**DEMAND FOR JURY TRIAL**

1                                    **CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT**

2            Plaintiffs KAREN LOPEZ (“LOPEZ”) and FRAY ORTEGA (“ORTEGA”), collectively  
3 “Plaintiffs,” on behalf of themselves and all others similarly situated and aggrieved, by and through their  
4 attorneys, Abramson Labor Group, hereby file this Class Action and Private Attorneys General Act of  
5 2004 (“PAGA”) Representative Action Complaint against Defendants NORWALK 939 INC. dba IHOP,  
6 a California Corporation; ASH HOP INC. dba IHOP, a California Corporation; ASH HOP II INC. dba  
7 IHOP, a California Corporation; ASH HOP III, INC. dba IHOP, a California Corporation; and DOES 1  
8 through 25 inclusive, (collectively, “Defendants”), and state as follows:

9                                    **I. INTRODUCTION**

10            1.        Plaintiffs LOPEZ and ORTEGA bring this class and representative action on behalf of  
11 themselves, on behalf of a class defined as all current and former hourly non-exempt employees of  
12 NORWALK 939 INC.; ASH HOP INC.; ASH HOP II INC.; and ASH HOP III, INC.—each doing  
13 business as IHOP—in California at any time during the Class Period beginning four years prior to the  
14 filing of this Complaint through the present (“Class Period”), and on behalf of all Aggrieved Persons who  
15 worked for Defendants as hourly, non-exempt employees in California at any time during the period  
16 beginning one year prior to the PAGA letter (defined below) through the present (“PAGA Period”).

17            2.        This is also an enforcement action under the Labor Code Private Attorneys General Act  
18 of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties and any other  
19 available relief on behalf of Plaintiffs, the State of California, and other current and former employees  
20 who work or worked for Defendants in California as non-exempt, hourly employees and who received at  
21 least one wage statement during their employment, and against whom one or more violations of any  
22 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days  
23 of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set  
24 forth in this complaint (“Aggrieved Employees”), at any time between one year and 65 days prior to the  
25 filing of this complaint (i.e., June 3, 2023) until judgment (the “PAGA Period”). Plaintiffs’ share of civil  
26 penalties sought in this action does not exceed \$75,000.

27            3.        Defendants NORWALK 939 INC.; ASH HOP INC.; ASH HOP II INC.; and ASH HOP  
28 III, INC. own and operate several casual restaurant locations in California, each doing business as the

1 International House of Pancakes or “IHOP.”

2 4. Defendants’ policy and practice is to deny earned wages, including premium and overtime  
3 pay, to their nonexempt employees in California. Defendants do not provide their employees with legally  
4 compliant meal periods and rest breaks nor premium pay in lieu thereof. Additionally, Defendants  
5 require their employees to be present and to perform work uncompensated in excess of eight hours per  
6 day and/or 40 hours per work week by mandating that these employees perform various forms of  
7 compensable work off-the-clock including, but not limited to, unlocking/locking doors, turning on/off  
8 lights, and loading/unloading trucks. Likewise, Defendants do not provide minimum wages and overtime  
9 pay for this off-the-clock time. These off-the-clock waiting periods exist for the sole benefit of  
10 Defendants and occurred frequently and regularly at Defendants’ locations throughout California. This  
11 illegal practice has been in effect by Defendants since at least the start of the Class Period.

12 5. Moreover, Defendants fail to timely compensate employees for all wages earned upon  
13 separation and fail to properly and accurately calculate minimum wages and overtime wages and report  
14 wages earned, hours worked, and wage rates. For these reasons, Plaintiffs bring this action on behalf of  
15 themselves and other hourly, nonexempt employees of Defendants to recover unpaid wages, overtime  
16 compensation, penalties, interest, injunctive relief, damages, and reasonable attorneys’ fees and costs.

17 6. Defendants’ deliberate failure to pay their hourly, nonexempt employees their earned  
18 wages and overtime compensation violates the California Labor Code and California’s Unfair  
19 Competition Law, codified under California’s Business & Professions Code.

20 7. Defendants failed to remit all gratuities to Plaintiffs and Class Members during the Class  
21 Period. Plaintiffs are informed and believe, and thereon allege, that Defendants engaged in improper tip  
22 withholding practices by reducing the total tips collected by the amount of the credit card transaction fees  
23 assessed on those credit card gratuities patrons left for Plaintiffs and Class Members.

24 8. Defendants fail to reimburse Plaintiffs and Class Members for a variety of unreimbursed  
25 business expenses including (1) expenses for the use of their personal vehicles to travel to the bank to  
26 make cash deposits for Defendant during their shifts and (2) because IHOP did not provide laundry  
27 services nor enough uniform shirts, expenses to launder their uniform shirts more frequently than they  
28 would have otherwise washed loads of laundry.

1           9.       Plaintiffs bring a class action under the California Code of Civil Procedure section 382  
2 against all Defendants on behalf of all hourly, nonexempt employees of Defendants in California for  
3 failing to provide compliant meal periods and rest breaks or premium pay in lieu thereof, for unpaid  
4 minimum wages, unpaid overtime wages, failing to remit all gratuities, failing to provide timely and  
5 accurate wage statements, failing to timely pay all wages owed at separation, failing to reimburse all  
6 necessary, business-related expenses, and other related penalties and damages under the California Labor  
7 Code and California Business & Professions Code.

## 8                                   **II.       JURISDICTION AND VENUE**

9           10.       This Court has jurisdiction over this matter because Defendants are licensed to do  
10 business in California, regularly conduct business in California, and committed and continue to commit  
11 the unlawful acts alleged herein in California.

12           11.       This Court has jurisdiction over this action pursuant to the California Constitution,  
13 Article VI, section 10. The statute under which this action is brought does not specify any other basis  
14 for jurisdiction.

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

25           13.       Venue lies properly with this Court, as it is the place where at least one defendant resides,  
26 is incorporated or has its principal place of business, or a substantial amount of the events which gave  
27 rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because  
28 Defendants employ persons in this county and employed at least one plaintiff in this county, and thus a

substantial portion of the transactions and occurrences related to this action occurred in this county.

14. 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 violating the California Labor Code.

### III. PARTIES

15. Plaintiff KAREN LOPEZ (“LOPEZ”) is a resident of Whittier, California. Defendants employed Plaintiff LOPEZ as an hourly-paid, non-exempt employee for approximately 1.75 years from July 2022 through March 31, 2024. LOPEZ’S positions were Server and Crew Chief. During her employment, Plaintiff LOPEZ worked at two of Defendants’ California locations in Norwalk and San Dimas, which are located at 12623 Norwalk Boulevard, Norwalk, California 90650 and 903 West Arrow Highway, San Dimas, California 91773. Plaintiff LOPEZ typically worked five days per week for eight or more hours per day. At the time Plaintiff LOPEZ’S employment ended, she was earning \$16.00 per hour plus gratuities as a Server and \$19.00 per hour plus gratuities as Crew Chief.

16. Plaintiff FRAY ORTEGA (“ORTEGA”) is a resident of Huntington Park, California. Defendants have employed Plaintiff ORTEGA as an hourly-paid, non-exempt employee for approximately 3.7 years from early 2020 through the present, however he began medical leave on October 20, 2023. ORTEGA’S positions are Assistant Manager, Server, and Cook. During his employment, worked at two of Defendants’ California locations in Norwalk and Paramount, which are located at 12623 Norwalk Boulevard, Norwalk, California 90650 and 16230 Paramount Boulevard, Paramount, California 90723. Plaintiff ORTEGA typically worked six days per week for eight or more hours per day. At the time Plaintiff ORTEGA’S employment paused for medical leave, he was earning \$16.00 per hour plus gratuities as a Server, \$19.00 per hour as a Cook, and \$19.00 per hour as an Assistant Manager.

17. Defendant NORWALK 939 INC. doing business as IHOP (“NORWALK 939”) is, on information and belief, a California Corporation doing business in California, with its principal place of business in Beverly Hills, California at 8306 Wilshire Boulevard, # 5009, Beverly Hills, CA 90210, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, in the State of California. NORWALK 939 operates multiple California IHOP franchise restaurants in

1 Los Angeles County and directs its operations from its Beverly Hills headquarters. NORWALK 939  
2 directed and supervised Plaintiffs' work.

3 18. Defendant ASH HOP INC. doing business as IHOP ("ASH HOP") is, on information  
4 and belief, a California Corporation doing business in California, with its principal place of business in  
5 Beverly Hills, California at 8306 Wilshire Boulevard, # 5009, Beverly Hills, CA 90210, and at all times  
6 hereinafter mentioned, is an employer whose employees are engaged throughout this county, in the State  
7 of California. ASH HOP operates multiple California IHOP franchise restaurants in Los Angeles County  
8 and directs its operations from its Beverly Hills headquarters. ASH HOP directed and supervised  
9 Plaintiffs' work.

10 19. Defendant ASH HOP II INC. doing business as IHOP ("ASH HOP II") is, on information  
11 and belief, a California Corporation doing business in California, with its principal place of business in  
12 Beverly Hills, California at 8306 Wilshire Boulevard, # 5009, Beverly Hills, CA 90210, and at all times  
13 hereinafter mentioned, is an employer whose employees are engaged throughout this county, in the State  
14 of California. ASH HOP II operates multiple California IHOP franchise restaurants in Los Angeles  
15 County and directs its operations from its Beverly Hills headquarters. ASH HOP II directed and  
16 supervised Plaintiffs' work.

17 20. Defendant ASH HOP III, INC. doing business as IHOP ("ASH HOP III") is, on  
18 information and belief, a California Corporation doing business in California, with its principal place of  
19 business in Beverly Hills, California at 8306 Wilshire Boulevard, # 5009, Beverly Hills, CA 90210, and  
20 at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county,  
21 in the State of California. ASH HOP III operates multiple California IHOP franchise restaurants in Los  
22 Angeles County and directs its operations from its Beverly Hills headquarters. ASH HOP III directed  
23 and supervised Plaintiffs' work.

24 21. Defendants created the policies and procedures described herein and, at all times during  
25 the Class Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

26 22. The practices and policies complained of by way of this Complaint are enforced  
27 throughout the State of California, including Los Angeles County.

1           23.     Plaintiffs are ignorant of the true names, capacities, relationships, and extent of  
2 participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but are  
3 informed and believe that said Defendants are legally responsible for the conduct alleged herein and  
4 therefore sue these Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege  
5 both the true names and capacities of the Doe Defendants when ascertained. Plaintiffs are informed and  
6 believe, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe  
7 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint  
8 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said  
9 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were  
10 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a  
11 principal, was negligent in the selection and hiring, training, and supervision of each and every other  
12 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiffs are  
13 informed and believe that each Defendant acted in all respects pertinent to this action as the agent of the  
14 other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and  
15 that the acts of each Defendant are legally attributable to each of the other Defendant.

16           **IV.       FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17           24.     At all times relevant herein, Defendants own and operate several franchise restaurants  
18 doing business as IHOP operating in California.

19           25.     Upon information and belief, Defendants NORWALK 939 INC.; ASH HOP; ASH  
20 HOP II; and ASH HOP III each maintain its corporate operations headquarters, including Human  
21 Resources in Beverly Hills, California. Upon information and belief, Defendants NORWALK 939  
22 INC.; ASH HOP; ASH HOP II; and ASH HOP III maintain a single, centralized HR department at  
23 their operations headquarters in Beverly Hills, California, which is responsible for conducting  
24 recruiting and hiring of new employees, as well as communicating and implementing Defendants  
25 NORWALK 939 INC.; ASH HOP; ASH HOP II; and ASH HOP III'S company-wide policies,  
26 including timekeeping policies, to employees throughout California. In particular, Plaintiffs and other  
27 Class Members, on information and belief, received the same standardized documents and/or written  
28 policies upon hire. Upon information and belief, the use of standardized documents and/or written

1 policies, including new hire documents, indicate that Defendants dictated policies at the corporate-  
2 level and implemented them company-wide, regardless of its employees' assigned locations or  
3 positions. On information and belief, all transactions regarding hiring, terminations, promotions, and  
4 pay increases, etc., relating to Defendants NORWALK 939 INC.; ASH HOP; ASH HOP II; and ASH  
5 HOP III'S California employees were submitted to and processed by Defendants NORWALK 939  
6 INC.; ASH HOP; ASH HOP II; and ASH HOP III'S HR department in Beverly Hills, California.

7 26. Upon information and belief, Defendants NORWALK 939 INC.; ASH HOP; ASH  
8 HOP II; and ASH HOP III's corporate records, business records, data, and other information related to  
9 Defendants, including, in particular, HR records pertaining to their California employees, are also  
10 maintained at their respective operations headquarters.

11 27. At all relevant times, Defendants NORWALK 939 INC.; ASH HOP; ASH HOP II; and  
12 ASH HOP III have been, and continue to be, a "person" as that term is defined under California  
13 Business & Professions Code section 17021 and California Labor Code sections 1-29.5.

14 28. At all times relevant herein, Plaintiff LOPEZ was employed by Defendants as an  
15 hourly, nonexempt employee in the positions of Server and Crew Chief in California during the Class  
16 Period.

17 29. At all times relevant herein, Plaintiff ORTEGA was employed by Defendants as an  
18 hourly, nonexempt employee in the positions of Server, Cook, and Assistant Manager in California  
19 during the Class Period.

20 30. At all times relevant herein, Plaintiffs and Class Members were assigned to and  
21 required and permitted to work without pay while performing tasks including, but not limited to:  
22 washing, preparing, and refilling food and condiments; labeling food with expiry dates and discarding  
23 expired food; cooking food and keeping the cooking stations clean; filling up and delivering drinks to  
24 patrons; providing condiments to patrons; taking patrons' orders, serving them, and then processing  
25 their payments; bussing tables; organizing and washing dishes; checking the perimeter of the  
26 restaurant to report any issues like graffiti; checking and reporting temperatures of refrigerators;  
27 drafting and sending emails to report on daily sales; to-go orders, staffing, and other figures; making  
28

trips to the bank to deposit cash; and complying with health department inspections. Plaintiffs and Class Members were not properly compensated for this work.

31. Similarly, Plaintiffs and Class Members have been instructed to and generally do timely clock out for their meal periods but they are regularly required to return to work—without clocking in—before 30 minutes has elapsed and only to clock back in once 30 minutes has elapsed. As such, Plaintiffs and Class Members clocked out for their meal periods but either continued working or resumed work before 30 minutes has elapsed, which was necessitated by managers. That is, Plaintiffs and Class Members already clocked out for their meal periods were interrupted and returned to work before 30 minutes had elapsed for the same reason—to address sudden influxes of customers, especially but not exclusively when the restaurant was short-staffed. All of this time worked was off the clock and is all compensable time. Defendants do not compensate Plaintiffs and Class Members for this compensable time worked off the clock.

32. At all times relevant herein, Plaintiffs and Class Members were assigned to and required to work for periods lasting in excess of five hours and were not authorized nor permitted to take full-length 30-minute, uninterrupted, off-duty meal periods. On longer shifts, Plaintiffs and Class Members also did not receive second meal periods after 12 hours, which was beyond the period of time covered by their meal period waivers, where executed. Accordingly, Plaintiffs' and Class Members' meal periods were missed or else on-duty for which Defendants failed to compensate Plaintiffs and Class Members with (1) premium pay for meal periods under 30 minutes and (2) the time worked that was on-duty during these meal periods.

33. Moreover, Plaintiffs and Class Members regularly worked in excess of 10 hours without a second 30-minute meal period, despite not signing meal period waivers.

34. At all times relevant herein, Plaintiffs and Class Members were assigned to and required and permitted to work shifts lasting over four hours and were not authorized nor permitted to take full, net 10-minute rest breaks during each shift or 4-hour work period.

35. At all times relevant herein, Defendants failed to authorize and permit Plaintiffs and Class Members to take full, net 10-minute, off-duty rest breaks during the Class Period. At the direction of Defendants and/or Defendants' knowledge and acquiescence, Plaintiffs and Class Members routinely

missed their entire 10-minute rest breaks. Defendants instructed Plaintiffs and Class Members to take return early from their rest breaks to handle sudden influxes of customers, which caused their rest breaks to be shorter than 10 minutes. Accordingly, Plaintiffs and Class Members' rest breaks were noncompliant. Consequently, Defendants should have compensated Plaintiffs and Class Members with premium pay for noncompliant rest breaks but failed to do so.

36. At all times relevant herein, Plaintiffs and Class Members worked in excess of eight hours per workday or 40 hours per work week. Defendants failed to properly pay for all hours worked in excess of eight hours per day, and when compensated for overtime, failed to pay the correct amount of overtime by underreporting Plaintiffs' and Class Members' total hours worked. Defendants failed to pay current and former hourly, nonexempt employees one and one-half times (1½) their regular rate of pay for hours worked in excess of eight hours per day or 40 hours per workweek. Defendants also failed to pay their employees at a rate no less than twice the regular rate of pay for work in excess of 12 hours in one day or for all hours worked in excess of eight hours on the seventh consecutive day of work in a workweek.

37. During the Class Period, Defendants require their hourly, nonexempt employees to perform compensable work while off the clock, including rolling silverware and similar tasks known as sidework, none of which was recorded or subsequently added and remains unpaid. Accordingly, during the Class Period, Defendants did not provide minimum wages and overtime, where eligible, pay for this time worked off-the-clock that Plaintiffs and the Class endured.

38. Defendants regularly failed to pay their hourly, nonexempt employees the correct amount of and rate for overtime wages. Defendants fail to record all hours as overtime by failing to record all hours worked in a workday. This work, done primarily for the employer's benefit, is time that hourly, nonexempt employees should be, but were not compensated for, both straight hours and overtime hours worked in excess of 40 hours in a week, hours worked in excess of eight hours in a day, and for the first eight hours worked on the seventh consecutive day of work in a workweek.

39. Supervisors employed by Defendants, including at Plaintiffs' locations, had knowledge of and required Plaintiffs and Class Members to perform compensable work during meal periods and rest breaks and at the end of their shifts. Supervisors throughout California were aware that Plaintiffs

1 and others similarly situated were performing work during these times without proper wages or, where  
2 eligible, overtime compensation.

3 40. In light of Defendants' failure to record employees' off-the-clock time that employees  
4 worked and Defendants' failure to acknowledge the noncompliant meal periods and rest breaks,  
5 Defendants failed to properly calculate the hourly, nonexempt employees' hours and therefore,  
6 employees' premium pay, minimum wages, and overtime wages due. Accordingly, Defendants failed  
7 to provide accurate wage statements to their hourly, nonexempt employees identifying all hours worked  
8 and all rates in effect during the pay period.

9 41. At all times relevant herein, the same unlawful practices and procedures described above  
10 affect hourly, nonexempt workers of Defendants employed in California.

11 42. At all times relevant herein, Defendants failed to pay Plaintiffs and Class Members for  
12 all hours worked. Thus, Defendants did not pay Plaintiffs and Class Members minimum wages in  
13 accordance with law and, because Class Members were not compensated for non-productive time  
14 worked and rest breaks and, for shifts worked over eight hours in duration, Defendants also did not pay  
15 nonexempt employees all overtime wages in accordance with law.

16 43. At all times relevant herein, Defendants failed to reimburse Plaintiffs and Class Members  
17 for including (1) expenses for the use of their personal vehicles to travel to the bank to make cash  
18 deposits for Defendant during their shifts and (2) because IHOP did not provide laundry services nor  
19 enough uniform shirts, expenses to launder their uniform shirts more frequently than they would have  
20 otherwise washed loads of laundry.

21 44. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class Members  
22 damages including, but not limited to, loss of wages and compensation. Defendants are liable to  
23 Plaintiffs and the Class for failing to pay minimum wages, failing to pay overtime wages, failing to pay  
24 all wages owed every pay period, failing to provide timely and accurate wage statements, failing to pay  
25 all wages owed upon separation, failing to reimburse all necessary, business-related expenses, and unfair  
26 competition.

27 45. Plaintiffs have complied with the procedures for bringing suit specified in California  
28 Labor Code section 2699.3. By letter dated August 6, 2024, Plaintiffs gave written notice by certified

1 mail to the Labor and Workforce Development Agency (“LWDA”), and Defendants, of the specific  
2 provisions of the Labor Code alleged to have been violated, including the facts and theories to support  
3 the alleged violations.

4 **V. CLASS ACTION AND REPRESENTATIVE ACTION ALLEGATIONS**

5 46. Plaintiffs are members of and seek to be the representatives for a Class of similarly  
6 situated employees who all have been exposed to, have suffered, and/or were permitted to work under  
7 Defendants’ unlawful employment practices as alleged herein.

8 47. Plaintiffs brings their first through ninth causes of action on behalf of themselves and on  
9 behalf of the following Class<sup>1</sup> of persons:

10 All current and former hourly non-exempt employees of NORWALK 939  
11 INC.; ASH HOP; ASH HOP II; and ASH HOP III in California at any time  
12 during the Class Period through the present.

13 48. This action is appropriately suited for a class action pursuant to Code of Civil Procedure  
14 section 382 because there exists an ascertainable and sufficiently numerous Class, a well-defined  
15 community of interest, and substantial benefits from certification that render proceeding as a class  
16 superior to the alternatives.

17 49. Numerosity and Ascertainability. The size of the Class makes a class action both  
18 necessary and efficient. On information and belief, the proposed Class includes hundreds of current and  
19 former employees at Defendants’ locations in California. Members of the Class are ascertainable through  
20 Defendants’ records but are so numerous that joinder of all individual Class Members would be  
21 impractical.

22 50. Predominant Common Questions of Law and Fact. Pursuant to section 382, common  
23 questions of law and fact exist as to all Class Members. These questions predominate over any  
24 individualized issues. These common questions include but are not limited to:

25 a. Whether Defendants’ policies and practices described in this Complaint were and are illegal;  
26  
27

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28 <sup>1</sup> Plaintiffs reserve the right under California Rules of Court, Rule 3.765, to amend or modify the Class description  
with greater particularity or further division into subclasses or limitation to particular issues.

- 1 b. Whether Plaintiffs and each member of the Class were not paid minimum wage for each hour  
2 worked or part thereof during which they were required to perform acts at the direction and  
3 for the benefit of Defendants;
- 4 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs and the  
5 members of the Class who worked as hourly, nonexempt employees in California for the total  
6 hours worked during the Class Period;
- 7 d. Whether Defendants have engaged in a common course of requiring or permitting their  
8 hourly, nonexempt employees to not report all hours worked during the Class Period;
- 9 e. Whether Defendants have engaged in a common course of failing to maintain true and  
10 accurate time records for all hours worked by their nonexempt employees;
- 11 f. Whether Defendants violated Labor Code section 226.7 and/or section 512 and engaged in a  
12 pattern or practice of failing to provide timely, off-duty, 30-minute meal periods to Plaintiffs  
13 and members of the Class who worked as hourly, nonexempt employees in California during  
14 the Class Period;
- 15 g. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the members  
16 of the Class who worked as hourly, nonexempt employees in California during the Class  
17 Period from taking full-length off-duty, 30-minute meal periods by imposing unmanageable  
18 amounts of work to complete, including catering to large volumes of patrons, during their  
19 shifts;
- 20 h. Whether Defendants engaged in a pattern or practice of impeding Plaintiffs and the members  
21 of the Class who worked as hourly, nonexempt employees in California during the Class  
22 Period from taking full-length, off-duty, 30-minute meal periods for their second meal periods  
23 for shifts worked in excess of 10 hours but not more than 12 hours, where these second meal  
24 periods were not waived by mutual consent;
- 25 i. Whether Defendants engaged in a pattern or practice of failing to properly compensate  
26 Plaintiffs and Class Members who worked as hourly, nonexempt employees in California  
27 during the Class Period for missed, untimely, or on-duty meal periods as required by  
28 California law;

- j. Whether Defendants violated section 11 of the applicable California Industrial Welfare Commission's ("IWC") Wage Order(s) by failing to provide Plaintiffs and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period with timely, off-duty, uninterrupted 30-minute meal periods;
- k. Whether Defendants engaged in an unfair practice and violated California Business and Professions Code, section 17200, *et seq.* by failing to provide Plaintiffs and the members of the Class who worked as hourly, nonexempt employees in California during the Class Period with their statutory, off-duty, meal periods;
- l. Whether Defendants maintained accurate time records of 30-minute meal periods taken by Plaintiffs and members of the Class during the Class Period in accordance with section 7 of the applicable IWC Wage Order(s);
- m. Whether Defendants engaged in a pattern or practice of failing to properly compensate Plaintiffs and Class Members who worked as hourly, nonexempt employees in California during the Class Period for failing to provide full-length 10-minute rest breaks as contemplated by California law for work periods in excess of four hours;
- n. Whether Defendants failed to compensate, and therefore violated section 12 of the applicable IWC Wage Order(s) and Labor Code section 226.7 by failing to provide 10-minute, off-duty, uninterrupted rest breaks as contemplated by California law for work periods in excess of four hours;
- o. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of overtime pay to Plaintiffs and the Class for hours worked in excess of eight hours in a day;
- p. Whether Defendants engaged in a pattern or practice of failing to pay appropriate amounts of double time for hours worked in excess of 12 hours in a day;
- q. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable IWC Wage Order(s) by failing to pay overtime pay to Plaintiffs and the Class for hours worked in excess of eight hours in a day;
- r. Whether Defendants violated section 510 of the Labor Code and/or section 3 of the applicable IWC Wage Order(s) by failing to pay overtime pay to Plaintiffs and the Class for the first

eight hours worked in a day on the seventh consecutive day in a workweek and double time for all hours worked in excess of eight hours on such days;

s. Whether Defendants violated Labor Code sections 218.5, 204, 1197, and 1198 due to failure to compensate Plaintiffs and the Class for those acts Defendants required Plaintiffs and members of the Class to perform for the benefit of Defendants;

t. Whether Defendants violated Labor Code section 226(a) by issuing inaccurate wage statements to Plaintiffs and members of the Class that failed to include payments for missed, untimely, and/or on-duty meal periods among wages earned throughout the Class Period;

u. Whether Defendants violated Labor Code section 226 by issuing inaccurate wage statements to Plaintiffs and members of the Class that failed to accurately state the total hours worked and therefore, the total gross and net wages owed, to the detriment of Plaintiffs and the Class;

v. Whether Defendants violated Labor Code section 351 by retaining a portion of gratuities patrons paid by credit card so as to cover the associated credit card transaction fees instead of disbursing the full amount of gratuity owed to Plaintiffs and the Class throughout the Class Period;

w. Whether Defendants violated Labor Code section 351 by disbursing any portion of gratuities patrons paid to Plaintiffs and the Class throughout the Class Period;

x. Whether Defendants violated California Labor Code section 2802 by failing to reimburse Plaintiffs and Class Members for all necessary business-related expenses they incurred;

y. Whether Defendants have engaged in a common course of failing to pay nonexempt employees all wages due upon termination;

z. Whether Defendants have engaged in unfair competition by the above-listed conduct; and

aa. The nature and extent of class-wide injury and the measure of damages for the injury.

51. Typicality. Plaintiffs' claims are typical of the members of the Class. Plaintiffs, like other members of the Class working for Defendants in California, were subjected to Defendants' policies and practices of refusing to provide compliant meal periods and rest breaks, failing to properly and fully pay all minimum and overtime wages, and failing to reimburse all necessary, business-related expenses in

violation of California wage and hour laws. Plaintiffs' job duties were and are typical of those of other class members who worked for Defendants in California.

52. Adequacy of Representation. Plaintiffs will fairly and adequately represent the interests of the Class because their individual interests are consistent with and not antagonistic to the interests of the Class, and because Plaintiffs have selected counsel who has the requisite resources and ability to prosecute this case as a class action and are experienced labor and employment attorneys who have successfully litigated other cases involving similar issues.

53. Superiority of Class Mechanism. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of these claims. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which Plaintiffs can effectively litigate against a large, well-represented corporate defendant like Defendants. In the absence of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of the many wrongful violations of the California state laws. Numerous repetitive individual actions would also place an enormous burden on the courts as they are forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and over again.

## **VI. FIRST CAUSE OF ACTION**

### **Failure to Provide Meal Periods**

**in Violation of Cal. Labor Code §§ 512 and 226.7; IWC Wage Order No. 5-2001, § 11  
(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

54. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

55. California Labor Code section 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

1           56.       IWC Wage Order No. 5-2001 (11)(A) provides, in pertinent part: “No employer shall  
2 employ any person for a work period of more than five (5) hours without a meal period of not less than  
3 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work  
4 the meal period may be waived by mutual consent of the employer and the employee.”

5           57.       Section 512(k) of the California Labor Code provides, in pertinent part, that: “An  
6 employer may not employ an employee for a work period of more than five hours per day without  
7 providing the employee with a meal period of not less than 30 minutes, except that if the total work period  
8 per day of the employee is no more than six hours, the meal period may be waived by mutual consent of  
9 both the employer and employee. An employer may not employ an employee for a work period of more  
10 than 10 hours per day without providing the employee with a second meal period of not less than 30  
11 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be  
12 waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

13           58.       Defendants also did not schedule second meal periods and had no policy for permitting  
14 and authorizing Plaintiffs and other employees to take second 30-minute meal periods on days they  
15 worked in excess of 10 hours in one day. For example, during his employment, Plaintiff ORTEGA  
16 regularly worked over 12 hours in a day but did not receive a second compliant meal period on those  
17 days despite the waiver stating that he would receive a second meal period, nor did he consent to waiving  
18 them beyond 10 hours of work. Because of Defendants’ companywide practice of denying hourly,  
19 nonexempt employees second 30-minute meal periods, Plaintiffs and other Class Members were not  
20 relieved of all duties such that they could take full-length second 30-minute meal periods and instead had  
21 to work during a portion of that time allotted for meal periods. Accordingly, Defendants failed to provide  
22 all meal periods in violation of California Labor Code sections 226.7 and 512. Defendants knew or  
23 should have known that their companywide adoption of the requirement that employees skip their meal  
24 period without executing waivers to do so would result in a failure to provide Plaintiffs and other Class  
25 Members with full and timely meal periods as required by the applicable IWC Wage Order(s) and Labor  
26 Code sections 226.7 and 512(a). Furthermore, Plaintiffs and other Class Members did not sign valid  
27 meal period waivers on days that they were entitled to meal periods but were not relieved of all duties.

28           59.       Moreover, Defendants engaged in a systematic, companywide policy to not pay meal

1 period premiums. Alternatively, to the extent that Defendants did pay Plaintiffs and other Class Members  
2 one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiffs and other  
3 Class Members at the correct rate of pay for premium wages because Defendants failed to include all  
4 forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the  
5 regular rate of pay. As a result, to the extent Defendants paid Plaintiffs and other Class Members  
6 premium pay for missed meal periods, it did so at a lower rate than required by law. As a result,  
7 Defendants failed to provide Plaintiffs and other Class Members compliant meal periods and failed to  
8 pay the full meal period premiums due, in accordance with California Labor Code sections 204, 210,  
9 226.7, and 512.

10 60. By their actions in requiring their employees to work during a portion of their meal periods  
11 and/or their failure to relieve nonexempt, hourly, nonexempt employees of their duties for their off-duty  
12 meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of IWC  
13 Wage Order No. 5-2001 and is liable to Plaintiffs and the Class.

14 61. As a result of the unlawful acts of Defendants, Plaintiffs and the Class have been deprived  
15 of timely off-duty meal periods and are entitled to recovery under Labor Code section 226.7(b) and  
16 section 11 of IWC Wage Order No. 5-2001, in the amount of one additional hour of pay at the employee's  
17 regular rate of pay for each work period during each day in which Defendants failed to provide their  
18 hourly, nonexempt employees with timely, statutory, off-duty meal periods.

## 19 **VII. SECOND CAUSE OF ACTION**

### 20 **Failure to Provide Rest Breaks**

21 **in Violation of Cal. Labor Code §§ 226.7, 512, and 1194;**

22 **IWC Wage Order No. 5-2001, § 12**

23 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

24 62. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint  
25 as if fully set forth herein.

26 63. California Labor Code section 226.7(a) provides, "No employer shall require any  
27 employee to work during any meal or rest period mandated by an applicable order of the Industrial  
28 Welfare Commission."

1           64.     IWC Wage Order No. 5-2001, section (12)(A) provides, in pertinent part: “Every  
2 employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall  
3 be in the middle of each work period. The authorized rest period time shall be based on the total hours  
4 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.  
5 However, a rest period need not be authorized for employees whose total daily work times is less than  
6 three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which  
7 there shall be no deduction from wages.”

8           65.     IWC Wage Order No. 5-2001, section (12)(B) provides, “If an employer fails to provide  
9 an employee with a rest period in accordance with the applicable provisions of this order, the employer  
10 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each  
11 workday that the rest period is not provided.”

12           66.     As alleged herein, Defendants failed to authorize and permit compliant rest breaks during  
13 the Class Period. Plaintiffs and members of the Class were routinely required to work during their entire  
14 rest breaks at the direction of Defendants and/or with Defendants’ knowledge and acquiescence.

15           67.     Furthermore, as with meal periods, Defendants’ staffing and job-assignment policies  
16 required employees to forgo their 10-minute rest breaks, entirely preventing Plaintiffs and Class Members  
17 from being relieved of all duty in order to take compliant rest breaks; these practices forced Plaintiffs and  
18 other Class Members to remain on duty for part of their rest breaks. As a result, Plaintiffs and Class  
19 Members would work shifts in excess of 3.5 hours without the net 10-minute rest breaks to which they  
20 were entitled. More specifically, throughout their employment, during 8-hour or longer shifts, Plaintiffs  
21 and Class Members regularly worked during the entirety of their 10-minute rest breaks by using that time  
22 to continue performing services for Defendants.

23           68.     At the same time, Defendants implemented a companywide policy to not pay rest break  
24 premiums. Alternatively, to the extent that Defendants did pay Plaintiffs and other Class Members one  
25 additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiffs and other Class  
26 Members at the correct rate of pay for premium wages because Defendants failed to include all forms of  
27 compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the regular rate  
28 of pay. As a result, to the extent Defendants paid Plaintiffs and other Class Members premium pay for

missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiffs and other Class Members were denied compliant rest breaks and Defendants failed to pay the full rest break premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s).

69. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and all others similarly situated and such conduct has continued through the filing of the initial Complaint.

70. As a direct and proximate result of Defendants' unlawful action, Plaintiffs and the Class have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks taken during the Class Period and are entitled to recovery under Labor Code section 226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work period during each day in which Defendants failed to provide employees with compliant and/or paid rest breaks.

### **VIII. THIRD CAUSE OF ACTION**

#### **Failure to Pay Minimum Wages**

#### **Upon Payment of Wages in Violation of Cal. Labor Code §§ 510, 1194, 1194.2,**

#### **and 1197; IWC Wage Order No. 5-2001, § 4**

#### **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

71. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

72. Labor Code section 510 provides in relevant part: "[e]ight hours of labor constitutes a day's work. Any work in excess of eight hours in one work day 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."

73. 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

1 minimum so fixed is unlawful.”

2 74. Labor Code section 1182.12 establishes the right of employees to be paid minimum wages  
3 for all hours worked in amounts set by state law.

4 75. Labor Code section 1194, subdivision (a) provides: “Notwithstanding any agreement to  
5 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime  
6 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the  
7 full amount of this minimum wage or overtime compensation, including interest thereon, reasonable  
8 attorney’s fees, and costs of suit.”

9 76. Labor Code section 1194.2 provides in pertinent part: “In any action under Section 1193.6  
10 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed  
11 by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount  
12 equal to the wages unlawfully unpaid and interest thereon.”

13 77. Pursuant to IWC Wage Order No. 5-2001, section (2)(H), at all times material hereto,  
14 “hours worked” includes “the time during which an employee is subject to the control of an employer,  
15 and includes all the time the employee is suffered or permitted to work, whether or not required to do  
16 so.”

17 78. At all times relevant during the liability period, under the provisions of IWC Wage Order  
18 No. 5-2001, Plaintiffs and each Class Member should have received not less than the minimum wage in  
19 a sum according to proof for the time worked, but not compensated.

20 79. For all hours that Plaintiffs and Class Members worked, they are entitled to not less than  
21 the California minimum wage and, pursuant to Labor Code section 1194.2(a) liquidated damages in an  
22 amount equal to the unpaid minimum wages and interest thereon.

23 80. Pursuant to Labor Code section 1194, Plaintiffs and Class Members are also entitled to  
24 their attorneys’ fees, costs, and interest according to proof.

25 81. At all times relevant during the liability period, Defendants willfully failed and refused,  
26 and continue to willfully fail and refuse, to pay Plaintiffs and Class Members the amounts owed.

27 82. As described above, Defendants required Plaintiffs and other Class Members to work off  
28 the clock, such as (1) performing work after clocking out at the end of their shifts because overtime was

discouraged, to complete tasks such as rolling silverware and (2) to return early from lunch while not clocking back in until 30 minutes had elapsed. Defendants' policy and practice was that employees perform these tasks off the clock without compensation. Also, Defendants did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. But to the extent that these off-the-clock hours did not qualify for overtime premium pay, Defendants did not pay at least minimum wages for those hours worked off-the-clock.

83. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and all other similarly situated nonexempt, hourly, nonexempt employees, and Defendants have done so continuously throughout the filing of this complaint.

84. As a direct and proximate result of Defendants' violation of Labor Code sections 510 and 1197, Plaintiffs and Class Members have suffered irreparable harm and money damages entitling them to damages, injunctive relief or restitution. Plaintiffs, on behalf of themselves and the Class, seek damages and all other relief allowable including all wages due while working as Defendants' hourly, nonexempt employees, attorneys' fees, liquidated damages, prejudgment interest, and as to those employees no longer employed by Defendants, waiting time penalties pursuant to Labor Code sections 200, *et seq.*

85. Plaintiffs and Class Members are entitled to the unpaid amount of minimum wages, prejudgment interest, liquidated damages, statutory penalties, attorneys' fees, and costs according to Labor Code sections 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure 1021.5.

#### **IX. FOURTH CAUSE OF ACTION**

##### **Failure to Pay Overtime Wages**

**in Violation of Cal. Labor Code §§ 510 and 1194, IWC Wage Order No. 5-2001, § 3**

**(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

86. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

87. Pursuant to section 3 of IWC Wage Order No. 5-2001; California Code of Regulations, Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512, 1194, and 1198, Defendants were required to compensate Plaintiffs and Class Members for all overtime

1 hours worked, which is calculated at one and one-half (1½) times the regular rate of pay for hours worked  
2 in excess of eight hours per day and/or 40 hours per week, and for the first eight hours on the seventh  
3 consecutive work day, with double time after eight hours on the seventh day of any work week, or after  
4 12 hours in any work day.

5 88. Plaintiffs and members of the Class were and are nonexempt employees entitled to the  
6 protections of IWC Wage Order No. 5-2001; California Code of Regulations, Title 8, section 11040,  
7 section 12; and Labor Code sections 200, 226, 500, 510, 512, 1194, and 1198. In addition, during the  
8 Class Period, Plaintiffs and other members of the Class consistently worked five days per week for shifts  
9 of eight hours or more. During the course of Plaintiffs' employment, and during the course of the  
10 employment of the members of the Class, Defendants failed to compensate Plaintiffs and the Class for  
11 overtime hours worked as required under the aforementioned Labor Codes and Regulations.

12 89. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiffs and members  
13 of the Class are entitled to one and one-half (1½) times and/or double their regular rate of pay for overtime  
14 work performed during the four years preceding the filing of this Complaint, based on appropriate  
15 calculations of the "total remuneration" for each workweek.

16 90. In violation of state law, Defendants have knowingly and willfully refused to perform  
17 their obligations to compensate Plaintiffs and the Class for all wages earned and all hours worked. As a  
18 direct result, Plaintiffs and the Class have suffered, and continue to suffer, substantial losses related to  
19 the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in  
20 seeking to compel Defendants to fully perform their obligations under state law, all to their respective  
21 damage in amounts according to proof at time of trial, but in amounts in excess of the minimum  
22 jurisdiction of this Court.

23 91. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful  
24 and deliberate intention of injuring Plaintiffs and the Class, from improper motives amounting to malice,  
25 and in conscious disregard of Plaintiffs' rights and the rights of the Class. Plaintiffs and the Class are  
26 thus entitled to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts  
27 according to proof a time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

28 92. Defendants' conduct described herein violates IWC Wage Order No. 5-2001; California

Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510, 512, and 1198. Therefore, pursuant to Labor Code sections 200, 203, 204, 226, 226.7, 512, 558, and 1194, Plaintiffs and the Class are entitled to recover the unpaid balance of overtime compensation Defendants owes Plaintiffs and the Class, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

**X. FIFTH CAUSE OF ACTION**

**Failure to Remit All Gratuities**

**in Violation of Cal. Labor Code § 351**

**(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

93. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

94. At all relevant times herein, California Labor Code section 351 provides that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron.

95. Further, "[a]n employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment."

96. Defendants reduced the gratuities disbursed to Plaintiffs and the Class by the associated credit card transaction fees assessed on the amounts patrons paid for gratuities via credit card. As such, Defendants collected, took, or received gratuities or parts thereof that patrons paid, gave to, or left for Plaintiffs and the Class.

97. Defendants engaged in improper tip pooling practices by including managerial employees who were not entitled to participate in the tip pool and/or excluding employees who were entitled to participate in the tip pool.

98. Defendants violated Labor Code section 351 by collecting, taking, or receiving any

1 gratuity or a part thereof that was paid, given to, or left for Plaintiffs and the Class by patrons. Violations  
2 of Labor Code section 351 for failure to remit to Plaintiffs and the Class the entire gratuity paid by  
3 customers or that customers would otherwise intend to leave for them. Accordingly, Plaintiffs and the  
4 Class are entitled to penalties as set forth by Labor Code section 354.

5 **XI. SIXTH CAUSE OF ACTION**

6 **Failure to Furnish Timely and Accurate Wage Statements**

7 **Upon Payment of Wages in Violation of Cal. Labor Code § 227.3**

8 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

9 99. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint  
10 as if fully set forth herein.

11 100. Labor Code section 226(a) sets forth reporting requirements for employers when they pay  
12 wages, as follows: “Every employer shall . . . at the time of each payment of wages, furnish his or his  
13 employees . . . an itemized statement in writing showing (1) gross wages earned; (2) total hours worked  
14 by the employee . . . (3) the number of piece-rate units earned and any applicable piece rate if the  
15 employee is paid on a piece-rate basis . . . .” Section (e) provides: “An employee suffering injury as a  
16 result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled  
17 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
18 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
19 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an  
20 award of costs and reasonable attorney’s fees.”

21 101. Defendants failed to accurately record the overtime hours worked by Plaintiffs and Class  
22 Members.

23 102. Additionally, Defendants failed to accurately record all rates of pay in effect during the  
24 pay period.

25 103. Plaintiffs and Class Members were damaged by these failures because, among other  
26 things, the failures hindered Plaintiffs and the Class from determining the amounts of wages actually  
27 owed to them.

28 104. Plaintiffs and Class Members request recovery of Labor Code section 226(e) penalties

1 according to proof, as well as interest, attorneys' fees and costs pursuant to Labor Code section 226(e),  
2 in a sum as provided by the Labor Code and/or other statutes.

3 **XII. SEVENTH CAUSE OF ACTION**

4 **Failure to Pay All Wages Owed Upon Separation**

5 **in Violation of Cal. Labor Code §§ 201–203**

6 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

7 105. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint  
8 as if fully set forth herein.

9 106. Labor Code section 201 provides, in relevant part, “[I]f an employer discharges an  
10 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

11 107. Labor Code section 202 provides, in relevant part, “[I]f an employee not having a written  
12 contract for a definite period quits his or his employment, his or his wages shall become due and payable  
13 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his  
14 intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.”

15 108. Section 203 of the California Labor Code provides that if an employer willfully fails to  
16 pay compensation promptly upon discharge or resignation, as required by sections 201 and 202, then the  
17 employer is liable for penalties in the form of continued compensation up to 30 workdays.

18 109. At all times relevant during the liability period, Plaintiffs and the other members of the  
19 Class were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code  
20 section 201, upon Plaintiff's and the Class Members' respective separation dates, Defendants were  
21 required to pay Plaintiff LOPEZ and Class Members all wages earned. Plaintiff LOPEZ was terminated,  
22 but Defendants paid her final pay five days following her termination rather than immediately, as required  
23 and in violation of Labor Code section 201.

24 110. At the time of Plaintiff LOPEZ'S and the Class Members' respective separation dates,  
25 Plaintiff LOPEZ and Class Members had unpaid wages. Defendants willfully failed to pay Plaintiff  
26 LOPEZ and other members of the Class who are no longer employed by Defendants for their  
27 uncompensated hours, uncompensated overtime, and missed, untimely, or on-duty meal periods and rest  
28 breaks upon their termination or separation from employment with Defendants as required by California

1 Labor Code sections 201 and 202. Thus, in violation of Labor Code section 201, Defendants failed to  
2 pay Plaintiff LOPEZ and the Class Members the full amount of wages due and owing them, in amounts  
3 to be proven at the time of trial, but in excess of the jurisdictional minimum of this Court.

4 111. Defendants' failure to pay Plaintiff LOPEZ and the Class respective wages due and owed  
5 to them was willful, and done with the wrongful and deliberate intention of injuring Plaintiffs and the  
6 Class Members and in conscious disregard of their rights.

7 112. Defendants' willful failure to pay former employee Plaintiff LOPEZ and the Class all of  
8 the wages due and owing them constitutes violations of Labor Code sections 201 and 203, which provide  
9 that an employee's wages will continue as a penalty up to 30 days from the time the wages were due.  
10 Therefore, former employee Plaintiff LOPEZ and the Class Members are each entitled to penalties  
11 pursuant to Labor Code section 203.

### 12 **XIII. EIGHTH CAUSE OF ACTION**

#### 13 **Failure to Reimburse All Necessary, Business-Related Expenses**

#### 14 **in Violation of Cal. Labor Code § 2802**

#### 15 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

16 113. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint  
17 as if fully set forth herein.

18 114. California Labor Code section 2802 provides that "An employer shall indemnify his or  
19 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
20 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though  
21 unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful."

22 115. During the applicable statutory period, Plaintiffs and Class Members incurred necessary  
23 expenditures and losses in direct consequence of the discharge of their employment duties and their  
24 obedience to the directions of Defendants, Defendants did not reimburse Plaintiffs and Class Members  
25 for these expenditures or losses. Such expenses include, but are not limited to, (1) expenses for the use  
26 of their personal vehicles to travel to the bank to make cash deposits for Defendants during their shifts  
27 and (2) because IHOP did not provide laundry services nor enough uniform shirts, Plaintiffs and Class  
28 Members effectively incurred additional expenses to launder their uniform shirts more frequently than

1 they would have otherwise washed loads of laundry.

2 116. Defendants have failed to fully reimburse Plaintiffs and Class Members for necessary  
3 business-related expenses and losses.

4 117. Plaintiffs and Class Members are entitled to recover their necessary unreimbursed  
5 business-related expenses and losses incurred during the course and scope of their employment, plus  
6 interest accrued from the date on which the employee incurred the necessary expenditures at the same  
7 rate as judgments in civil actions in the State of California, pursuant to California Labor Code section  
8 2802.

9 **XIV. NINTH CAUSE OF ACTION**

10 **Violations of California's Unfair Competition Law ("UCL"),**

11 **California Business and Professions Code §§ 17200, *et seq.***

12 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

13 118. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint  
14 as if fully set forth herein.

15 119. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any  
16 unlawful, unfair, or fraudulent business practices.

17 120. Through their actions alleged herein, Defendants have engaged in unfair competition  
18 within the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair,  
19 and/or fraudulent business practices under the UCL.

20 121. Defendants' unlawful conduct under the UCL includes, but is not limited to, violating the  
21 statutes alleged herein. Defendants' unfair conduct under the UCL includes, but is not limited to, failure  
22 to pay Class Members wages and compensation they earned through labor provided, and failing to  
23 otherwise compensate Class Members, as alleged herein. Defendants' fraudulent conduct includes, but  
24 is not limited to, issuing wage statements containing false and/or misleading information about the time  
25 Class Members worked and the amount of wages or compensation due.

26 122. Defendants' violations of California wage and hour laws and illegal payroll practices or  
27 payment policies constitute a business practice because they were done repeatedly over a significant  
28 period of time, and in a systematic manner to the detriment of Plaintiffs and Class Members.

1           123. Plaintiffs have standing to assert this claim because they have suffered injury in fact and  
2 have lost money as a result of Defendants' conduct.

3           124. For the four years preceding the filing of this action, Plaintiffs and Class Members have  
4 suffered damages and request restitutionary disgorgement of all monies and profits to be disgorged from  
5 Defendants in an amount according to proof at the time of trial and an injunction prohibiting them from  
6 engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

7                                   **XV. TENTH CAUSE OF ACTION**

8           **For Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"),**

9                                   **§§ 2698, *et seq.*, for Violations of California Labor Code Sections**

10           **(Brought by Plaintiffs on Behalf of Themselves and the General Public Against All Defendants)**

11           125. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint  
12 as if fully set forth herein.

13           126. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage  
14 Order(s) that provides for a civil penalty to be assessed and collected by California's Labor and  
15 Workforce Development Agency ("LWDA") for violations of the California Labor Code and applicable  
16 IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought  
17 on behalf of themselves and other current or former employees pursuant to procedures outlined in  
18 California Labor Code section 2699.3.

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

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

25           129. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including  
26 Plaintiffs, may pursue a civil action arising under PAGA, alleging violations of any provision listed in  
27 section 2699.5, after the following requirements have been met:

28           a. The aggrieved employee shall give written notice ("Employee's Notice") by online filing

1 to the LWDA and by certified mail to the employer of the specific provisions of the  
2 California Labor Code alleged to have been violated, including the facts and theories to  
3 support the alleged violations;

4 b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and

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

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

15 a. The aggrieved employee shall give written notice by online filing ("Employee's Notice")  
16 to the LWDA and by certified mail to the employer of the specific provisions of the  
17 California Labor Code alleged to have been violated, including the facts and theories to  
18 support the alleged violations;

19 b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and

20 c. The employer may cure the alleged violation within 33 calendar days of the postmark date  
21 of the Employee's Notice. The employer shall give written notice by certified mail within  
22 that period of time to the aggrieved employee or representative and the agency if the  
23 alleged violation is cured, including a description of actions taken, and no civil action  
24 pursuant to Section 2699 may commence. If the alleged violation is not cured within the  
25 33-day period, the employee may commence a civil action pursuant to Section 2699.

26 131. On August 6, 2024, Plaintiffs provided written notice by online filing to the LWDA and  
27 by certified mail to Defendants NORWALK 939 INC. doing business as IHOP; ASH HOP INC. doing  
28 business as IHOP; ASH HOP II INC. doing business as IHOP; and ASH HOP III, INC. doing business

1 as IHOP of the specific provisions of the California Labor Code alleged to have been violated, including  
2 facts and theories to support the alleged violations, in accordance with California Labor Code section  
3 2699.3. Plaintiffs' notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy  
4 of Plaintiffs' written notice to the LWDA and Defendants NORWALK 939 INC. doing business as IHOP;  
5 ASH HOP INC. doing business as IHOP; ASH HOP II INC. dba IHOP; and ASH HOP III, INC. doing  
6 business as IHOP dated August 6, 2024 is attached hereto as "**Exhibit 1.**" Exhibit 1 is incorporated into  
7 this Complaint by reference.

8 132. As of the filing date of this complaint, over 65 days has passed since Plaintiffs sent the  
9 LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiffs'  
10 claims. Defendants have not given notice that it has cured the alleged violations set forth in this  
11 Complaint. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor Code  
12 section 2699.3(a) and (c) to recover civil penalties Against All Defendants, in addition to other remedies,  
13 for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a),  
14 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

15 133. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf  
16 of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating  
17 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil  
18 penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each  
19 pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid  
20 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for  
21 each pay period for which the employee was underpaid in addition to an amount sufficient to recover  
22 underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this  
23 section are in addition to any other civil or criminal penalty provided by law."

24 134. Defendants, at all times relevant herein, were employers or persons acting on behalf of an  
25 employer(s) who violated Plaintiffs' and other non-party aggrieved employees' rights by violating  
26 various sections of the California Labor Code as set forth above.

27 135. As set forth below, Defendants have violated numerous provisions of both the Labor Code  
28 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order(s) for Defendants' failure to provide Plaintiffs and other Class Members with compliant meal periods and/or rest breaks, as set forth above;
- b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC Wage Order(s) for Defendants' failure to compensate Plaintiffs and other Class Members with at least minimum wages for all hours worked as set forth above;
- c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for Defendants' failure to compensate Plaintiffs and other Class Members with overtime wages for all hours worked in excess of eight in one day or 40 in one week and double time for all hours worked in excess of 12 hours, as set forth above;
- d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s) for willful and intentional failure to provide accurate and complete wage statements to Plaintiffs and other Class Members as set forth above;
- e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s) for failure to maintain payroll records. 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(s). 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(s), 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 failed, on a companywide basis, to keep records of meal period start and stop times for Plaintiffs and other non-party aggrieved employees in violation of section 1198. 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 . . . .” 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 actually worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked;

- f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth above;
- g. Violations of Labor Code section 204 for failure to pay all earned wages during employment as set forth above;
- h. Violations of Labor Code section 351 for failure to remit all gratuities as set forth above;
- i. Violations of Labor Code section 2802 for failure to reimburse employees for all necessary, business-related expenses incurred during employment as set forth above;
- j. Plaintiffs and other non-party aggrieved employees are therefore entitled to recover penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g); and
- k. Any and all additional applicable civil penalties and sums as provided by the California Labor Code and/or other relevant statutes.

136. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558, Plaintiffs, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other non-party aggrieved employees, and the State of California against all defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

137. In addition, Plaintiffs seek and are entitled to sixty-five percent (65%) of all penalties obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the California Labor Code, and thirty-five percent (35%) to all aggrieved employees.

138. Further, Plaintiffs are entitled to recover reasonable attorneys’ fees and costs pursuant to

California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

**XVI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated and also on behalf of the general public, respectfully request that this Court find against all defendants as follows:

1. An order that this action may proceed and may be maintained as a class action;
2. All unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member on their minimum wage claims;
3. All unpaid overtime wages due to Plaintiffs and each Class Member;
4. One hour of wages due to Plaintiffs and each Class Member for each work period of more than four hours when they did not receive an uninterrupted 10-minute rest break;
5. One hour of wages due to Plaintiffs and each Class Member for each work period of more than five hours when they did not receive an uninterrupted 30-minute meal period;
6. All unpaid minimum wages and liquidated damages due to Plaintiffs and each Class Member on their minimum wage claim;
7. For restitution of all monies due to Plaintiffs and members of the Class and disgorged profits from the unlawful business practices of Defendants, including withholding of tips;
8. For waiting time penalties pursuant to Labor Code section 203;
9. Statutory penalties under Labor Code section 226(e);
10. For reimbursement of business expenses under California Labor Code section 2802;
11. For penalties pursuant to Labor Code sections 204, 206, 210, 225.5, 226, 226.3, 226.7, 351, 354, 510, 512, 558, 1174.5, 1182.12, 1194, 1194.2, 1197.1, 1198, and 2802;
12. For injunctive relief enjoining Defendants from engaging in the unlawful and unfair business practices complained of herein;
13. For all civil penalties permitted by California's Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, based on all the alleged statutory violations set forth in this Complaint;
14. For costs of suit and expenses incurred herein pursuant to Labor Code sections 226 and 1194;
15. Prejudgment interest at the maximum legal rate on all due and unpaid wages pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;

1        16. For reasonable attorneys' fees pursuant to Labor Code sections 218.5, 226, 1194, 2699(g), and  
2 Code of Civil Procedure section 1021.5;

3        17. Accounting of Defendants' records for the liability period;

4        18. General, special, and consequential damages, to the extent allowed by law; and

5        19. All such other and further relief that the Court may deem just and proper.  
6

7 Dated: October 10, 2024

**ABRAMSON LABOR GROUP**

8  
9 By:   
Cheryl A. Kenner

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11 Attorneys for Plaintiffs KAREN LOPEZ and FRAY  
12 ORTEGA, individually, and on behalf of all others  
13 similarly situated and aggrieved  
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs KAREN LOPEZ and FRAY ORTEGA, on behalf of themselves and all others similarly  
3 situated and aggrieved, hereby demand a jury trial with respect to all issues triable of right by jury.  
4

5 Dated: October 10, 2024

**ABRAMSON LABOR GROUP**

6  
7 By: Cheryl Kenner  
8 Cheryl A. Kenner

9 Attorneys for Plaintiffs KAREN LOPEZ and FRAY  
10 ORTEGA, individually, and on behalf of all others  
11 similarly situated and aggrieved  
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# **EXHIBIT 1**

**VIA ONLINE SUBMISSION**

Stewart Knox, Secretary  
California Labor & Workforce  
Development Agency  
800 Capitol Mall, Suite 5000 (MIC-55)  
Sacramento, CA 95814

**VIA CERTIFIED MAIL**

Norwalk 939 Inc. dba IHOP  
Attn: Human Resources  
12623 Norwalk Blvd.  
Norwalk, CA 90650

Norwalk 939 Inc. dba IHOP  
Attn: Human Resources  
16230 Paramount Blvd.  
Paramount, CA 90723

Norwalk 939 Inc. dba IHOP  
Ash Hop Inc. dba IHOP  
Ash Hop II Inc. dba IHOP  
Ash Hop III, Inc. dba IHOP  
Attn: Legal Department  
8306 Wilshire Blvd. #5009  
Beverly Hills, CA 90210

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR  
CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Norwalk 939 Inc. dba IHOP; Ash Hop Inc. dba IHOP; Ash Hop II Inc. dba IHOP; and Ash Hop III, Inc. dba IHOP

From: Karen Lopez and Fray Ortega, on behalf of themselves and all other current and former hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employees Karen Lopez (“Ms. Lopez”) and Fray Ortega (“Mr. Ortega”) to seek compensation and all other available relief, including civil penalties on their behalf and on the behalf of all those similarly aggrieved (collectively with Ms. Lopez and Mr. Ortega, “Claimants”) who have been injured by Norwalk 939 Inc. dba IHOP; Ash Hop Inc. dba IHOP; Ash Hop II Inc. dba IHOP; and Ash Hop III, Inc. dba IHOP (collectively, “IHOP”) violations of the California Labor Code. Ms. Lopez and Mr. Ortega, on behalf of themselves and all other similarly aggrieved current and former hourly nonexempt employees of IHOP, intend 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.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

**Factual Statement:**

IHOP operates several IHOP restaurant locations in California, which offer patrons a casual dining atmosphere, many of which are 24-hour establishments.

Claimant Ms. Lopez worked at multiple IHOP locations from approximately July 2022 to March 31, 2024 as an hourly, nonexempt employee in the positions of Server (earning \$16.00 per hour plus gratuities) and Crew Shift (earning \$19.00 per hour plus gratuities) at the time of her separation. Claimant Mr. Ortega has been employed by IHOP, also at multiple IHOP locations, from approximately early 2020 through October 20, 2023—when his medical leave commenced—as an hourly, nonexempt employee in the positions of Assistant Manager (earning \$19.00 per hour), Server (earning \$16.00 per hour plus gratuities), and Cook (earning \$19.00 per hour). Ms. Lopez and Mr. Ortega, on behalf of themselves and all other similarly aggrieved current and former employees in California in various positions, are or were generally engaged in serving customers and providing labor at various IHOP restaurants. As part of their employment with IHOP, Claimant and other hourly, nonexempt employees, collectively, “hourly nonexempt employees,” are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, washing, preparing, and refilling food and condiments; labeling food with expiry dates and discarding expired food; cooking food and keeping the cooking stations clean; filling up and delivering drinks to patrons; providing condiments to patrons; taking patrons’ orders, serving them, and then processing their payments; bussing tables; organizing and washing dishes; checking the perimeter of the restaurant to report any issues like graffiti; checking and reporting temperatures of refrigerators; drafting and sending emails to report on daily sales; to-go orders, staffing, and other figures; making trips to the bank to deposit cash; and complying with health department inspections.

Claimant Ms. Lopez regularly worked five (5) days per week for 8 hours or more hours per day. Claimant Mr. Ortega regularly worked six (6) days per week for 8 hours or more hours per day. During the entire course of their employment, IHOP failed to provide Ms. Lopez and Mr. Ortega and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. IHOP has also failed to remit all gratuities owed and pay minimum wages to Mr. Ortega and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 5-2001. As a consequence of failing to pay minimum wages, IHOP has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to, IWC Wage Order No. 5-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, IHOP has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

IHOP has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, IHOP has failed and continues to fail to provide timely, accurate wage statements to Ms. Lopez and Mr. Ortega and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by IHOP, including Ms. Lopez, IHOP violated Labor Code section 203 by failing to pay all wages due upon separation. IHOP has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs for mileage for trips in personal vehicles conducted on the clock on behalf of IHOP, in violation of Labor Code section 2802. Ms. Lopez and Mr. Ortega are informed and believe that such violations are ongoing, systematic, and continuous. Ms. Lopez and Mr. Ortega intend to bring an

action against IHOP under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.<sup>1</sup>

### Theories of Labor Code Violations and Remedies:

Claimant Ms. Lopez was employed by IHOP from approximately July 2022 to March 31, 2024 as an hourly, nonexempt employee holding the positions of Server and Crew Shift at the time of her separation. Claimant Mr. Ortega has been employed by IHOP from approximately early 2020 through the present—with medical leave commencing October 20, 2023—as an hourly, nonexempt employee holding the positions of Assistant Manager, Server, and Cook. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, IHOP has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. IHOP has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and sections 4 and 5 of IWC Wage Order No. 5-2001. First, Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred for one of two reasons: (1) Claimants were required to perform work after clocking out at the end of their shifts because overtime was discouraged, to complete tasks such as rolling silverware and (2) to return early from lunch while not clocking back in until 30 minutes had elapsed. Accordingly, Claimants were not paid for that time spent working off the clock. That is, Defendant implemented policies and enforced practices requiring Claimants to perform work during their meal periods (while clocked out) and rest breaks, the effects of which Defendant could have mitigated by adjusting expectations and/or by adding more staff to reduce the expected daily workload. However, Defendant instead chose to instruct Claimants to work during their meal periods on particularly demanding days and to skip rest breaks. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on IHOP’s part to provide compliant meal periods and rest breaks. With that, IHOP’s corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes IHOP’s failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Second, IHOP’s failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also

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<sup>1</sup> Without limitation, Ms. Lopez and Mr. Ortega, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

constitutes a failure to pay minimum wages to Claimants. Third, section 5 of the IWC Wage Order No. 5-2001 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.” Claimants, including Ms. Lopez, reported to work on regularly scheduled workdays but, due to low customer volume, were sent home without the requisite pay on the corresponding paycheck. For all of the foregoing reasons, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 5-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, IHOP failed to authorize and permit timely, full-length meal periods for Ms. Lopez and Mr. Ortega and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 5-2001. Ms. Lopez and Mr. Ortega and all similarly aggrieved persons were required to perform work during their meal periods in the form of continuing to perform their assigned services that cut into their 30-minute meal periods, necessitating that they returned from their meal period early before 30 minutes had elapsed. Ms. Lopez and Mr. Ortega and Claimants also began their meal periods after the end of the fifth hour. Despite that, IHOP did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since IHOP required Ms. Lopez and Mr. Ortega and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 5-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, IHOP likewise failed to authorize and permit Ms. Lopez and Mr. Ortega and all other similarly aggrieved employees to take any full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 5-2001. Claimants were not able to take their requisite number of 10-minute rest breaks based on their shift duration; Claimants regularly worked through their rest breaks. IHOP did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 5-2001. Furthermore, since IHOP required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, IHOP was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Ms. Lopez and Mr. Ortega and Claimants regularly worked overtime hours. IHOP has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, IHOP failed to provide Ms. Lopez and Mr. Ortega and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 5-2001, section 3.

Claimants were at all times entitled to receive all gratuities paid to or left for employees by patrons regardless of the form in which the gratuity was delivered, which shall not be deducted by credit card fees assessed to IHOP by credit card companies. Cal. Lab. Code § 351. IHOP failed to remit all gratuities owed Claimants as required by Labor Code section 351. For example, IHOP engaged in improper tip withholding

practices by reducing the tips collected by the amount credit card companies assessed to IHOP on those particular transactions. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from IHOP, including Ms. Lopez, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Ms. Lopez, did not receive all wages owed upon separation based on IHOP’s prior failings to pay all wages owed every pay period, including but not limited to gratuities and meal and rest premiums owed and for all hours worked, as explained above.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from IHOP pursuant to Labor Code section 226. First, Ms. Lopez and Mr. Ortega’s wage statements do not reflect the correct legal name of Defendant: Norwalk 939 Inc.—they simply say “IHOP 939.” Second, because IHOP failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by IHOP for all necessary, **business-related expenses** they incurred in executing their duties for IHOP. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Ms. Lopez and Mr. Ortega and Claimants drove their personal vehicles from IHOP to the bank to make cash deposits on IHOP’s behalf. IHOP, however, failed to reimburse Ms. Lopez and Mr. Ortega and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, these costs incurred for the use of their personal vehicles to travel to the bank to make cash deposits for Defendant during their shifts. Second, IHOP required Claimants to wear particular uniform shirts that IHOP provided, however, IHOP did not provide laundry services or reimbursements nor enough shirts, which effectively, required Claimants to incur additional expenses to launder their uniform shirts more frequently than they would have otherwise washed loads of laundry. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

IHOP’s uniform failure to pay overtime and minimum wages, failure to authorize and permit full-length, off-duty rest breaks and meal periods or pay Claimants adequate premium compensation in lieu thereof, failure to remit all gratuities, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, 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), 2699.3(c), and 2699.5, Mr. Ortega,

acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against IHOP for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

**ABRAMSON LABOR GROUP**

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner