



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

October 23, 2024

VIA ONLINE SUBMISSION

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

Subject: *Enrique Ramos v. NewCo Foods, Inc., et al.*

Dear PAGA Administrator:

This office represents Enrique Ramos in connection with his claims under the California Labor Code. Mr. Ramos was an employee of NEWCO FOODS, INC.; CALTEX FOODS, INC.; FRESNO FOODS, LLC; and/or YOSI FOODS LLC. For the purpose of this letter, Mr. Ramos collectively refers to these entities as "NEWCO FOODS".

The employers may be contacted directly at the addresses below:

NEWCO FOODS, INC.
4917 GENESTA AVE
ENCINO, CA 91316

FRESNO FOODS, LLC
4917 GENESTA AVE
ENCINO, CA 91316

CALTEX FOODS, INC.
4917 GENESTA AVE
ENCINO, CA 91316

YOSI FOODS LLC
4917 GENESTA AVE
ENCINO, CA 91316

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

NEWCO FOODS employed Mr. Ramos as an hourly paid, non-exempt Shift Leader from approximately January 2024 to April 2024. During his employment, Mr. Ramos typically worked eight (8) hours or more per day, and five (5) days per week. At the time Mr. Ramos's employment with NEWCO FOODS ended, he earned approximately \$17.25 per hour. His job duties included,

without limitation, cashiering, cooking, cleaning, completing food safety charts, and addressing customer complaints.

NEWCO FOODS committed each of the following Labor Code violations against Mr. Ramos, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

NEWCO FOODS’s Company-Wide and Uniform Payroll and HR Practices

NEWCO FOODS, INC. and CALTEX FOODS, INC. are California corporations and FRESNO FOODS, LLC and YOSI FOODS LLC are California limited liability companies. Together, they own and operate approximately 28 Jack in the Box franchise restaurant locations in California. Upon information and belief, NEWCO FOODS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Encino, California, for all non-exempt, hourly paid employees working for NEWCO FOODS in California, including Mr. Ramos and other aggrieved employees. At all relevant times, NEWCO FOODS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ramos and other aggrieved employees, regardless of their location or position.

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

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

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

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

NEWCO FOODS willfully failed to pay all overtime wages owed to Mr. Ramos and other aggrieved employees. During the relevant time period, Mr. Ramos and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, NEWCO FOODS had, and continues to have, a policy and/or practice of discouraging and impeding Mr. Ramos and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime, coupled with NEWCO FOODS's use of labor budgets and assignment of heavy workloads (*see infra*), led Mr. Ramos and other aggrieved employees to work off-the-clock before and after their scheduled shift times, and on their days off. For example, approximately twice per week, when Mr. Ramos arrived for his shifts, NEWCO FOODS's management required him to start working immediately, for up to 30 minutes and before he was permitted to clock in, performing opening tasks such as opening the restaurant, turning on the lights, and cleaning and turning on the grill. In addition, approximately twice per week, NEWCO FOODS's management required Mr. Ramos to clock out at his scheduled shift end-time and continue performing his job duties, such as assisting customers, restocking, and transferring shipments from one restaurant location to another. As a further example, NEWCO FOODS's managers often called Mr. Ramos on his personal cellular phone regarding work-related matters, such as restaurant equipment, menu pricing, materials, shipments, and scheduling. Finally, Mr. Ramos and other aggrieved employees were required to don and doff uniform items and food safety equipment, such as a hair net, gloves, and apron. However, NEWCO FOODS did not allow Mr. Ramos and other aggrieved employees to report the time they spent donning and doffing their uniform items and/or food safety equipment at the beginning and end of their shifts, despite being on work premises and under NEWCO FOODS's control. This off-the-clock work could have been recorded by NEWCO FOODS, but it refused to do so to avoid payment of additional wages to Mr. Ramos and other aggrieved employees. Thus, NEWCO FOODS failed to track all of the time that employees spent performing work-related tasks outside of their scheduled shifts, and Mr. Ramos and other aggrieved employees received no compensation for this time.

Moreover, because NEWCO FOODS's timekeeping system was integrated with the company's point-of-sale ("POS") system and limited monitors were available for clocking in and out, Mr. Ramos and other aggrieved employees would sometimes have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions and/or clocking in or out. For instance, Mr. Ramos was required to wait up to 10 minutes off-the-clock and under NEWCO FOODS's control until a POS monitor was available for clocking-in. Thus, Mr. Ramos and other aggrieved employees performed work that was not recorded, time for which they were not paid.

Second, as stated, NEWCO FOODS had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. This practice of labor budgeting and/or limited payroll allocation, combined with the assignment of heavy workloads, has resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this insufficient meal period coverage, Mr. Ramos and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. NEWCO FOODS also had a practice of failing to schedule meal periods, which further caused Mr. Ramos and other aggrieved employees to not be relieved of their duties for compliant meal periods. For

example, Mr. Ramos worked through two (2) of his meal periods per week because there was an inadequate number of employees to take over his job duties while he took his meal periods; additionally, about once per month, Mr. Ramos worked through his meal periods because he was required to complete online courses and/or trainings on new menu items and safety procedures. Further, Mr. Ramos's meal periods were interrupted because he needed to assist the customers or travel to other restaurant locations to pick up supplies. NEWCO FOODS did not compensate Mr. Ramos and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Third, NEWCO FOODS's company-wide timekeeping system prevented Mr. Ramos and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Ramos and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, NEWCO FOODS's timekeeping system prevented Mr. Ramos and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

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

NEWCO FOODS's failure to pay Mr. Ramos and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

As set forth above, as a result of NEWCO FOODS's policy of limiting the amount of overtime employees could accrue, NEWCO FOODS required Mr. Ramos and other aggrieved employees to perform work off-the-clock before and after their scheduled shift start- and end-times and on their days off to complete their tasks, such as opening the restaurant, turning on the lights, cleaning and turning on the grill, attending to customers, responding to phone calls from management about work-related matters, donning and doffing food safety equipment and uniform items, and completing online courses and/or trainings. Moreover, as stated, because NEWCO FOODS's timekeeping

system was integrated with the company's POS system, Mr. Ramos and other aggrieved employees sometimes had to wait to clock in for the start of their shifts when other employees were using the POS system to handle customer transactions or were clocking in or out themselves. Because NEWCO FOODS failed to track this time Mr. Ramos and other aggrieved employees spent working off-the-clock, Mr. Ramos and other aggrieved employees received no compensation for this time.

Further, as set forth above, due to NEWCO FOODS's policies and/or practices of utilizing labor budgets, understaffing, assigning heavy workloads, failing to schedule meal periods, and subsequent lack of meal coverage, Mr. Ramos and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. In addition, as stated, NEWCO FOODS's company-wide timekeeping system prevented Mr. Ramos and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Ramos and other aggrieved employees for a full 30 minutes. Thus, NEWCO FOODS failed to pay Mr. Ramos and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Accordingly, NEWCO FOODS regularly failed to pay at least minimum wages to Mr. Ramos and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as set forth above, NEWCO FOODS had, and continues to have, company-wide policies and/or practices of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and failure to schedule meal periods, resulted in a lack of adequate meal period coverage and prevented Mr. Ramos and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Ramos and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, approximately twice per week, Mr. Ramos missed his meal periods entirely because there was an inadequate number of employees to take over his job duties while he took his meal periods. As a further example, approximately twice per week, Mr. Ramos had his meal periods interrupted and/or cut short to assist customers and/or complete training, per NEWCO FOODS's management's request. Finally, approximately once per week, Mr. Ramos took his meal periods late, after the fifth hour of work, due to heavy customer traffic.

In addition, as stated, NEWCO FOODS's company-wide timekeeping system prevented Mr. Ramos and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Ramos and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Mr. Ramos and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

In addition, NEWCO FOODS engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Mr. Ramos and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods.

Accordingly, NEWCO FOODS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which

insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, NEWCO FOODS regularly failed to authorize and permit Mr. Ramos and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, NEWCO FOODS’s company-wide practices, including labor budgeting, understaffing, and assigning heavy workloads, prevented Mr. Ramos and other aggrieved employees from being relieved of all duty to take rest periods. NEWCO FOODS also failed to schedule rest periods, which, coupled with NEWCO FOODS’s failure to provide adequate rest period coverage, further led to Mr. Ramos and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of NEWCO FOODS’s practices and policies, Mr. Ramos and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Ramos had to miss his rest periods approximately twice per week due to a lack of rest period coverage.

NEWCO FOODS also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Ramos and other aggrieved employees have not received all premium pay for missed rest periods.

Accordingly, NEWCO FOODS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

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

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

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

other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, NEWCO FOODS engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Ramos and other aggrieved employees in violation of section 1198.

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

Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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

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

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

Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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

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

On information and belief, NEWCO FOODS has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Ramos was terminated on April 2, 2024; however, he did not receive his entire final pay until April 5, 2024. Thus, NEWCO FOODS failed to pay Mr. Ramos and other aggrieved employees their final wages immediately, in violation of California Labor Code section 201.

In addition, NEWCO FOODS willfully failed to pay Mr. Ramos and other aggrieved employees who are no longer employed by NEWCO FOODS all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving NEWCO FOODS's employ.

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

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

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

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, NEWCO FOODS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A), because NEWCO FOODS failed to pay

Mr. Ramos and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day's work.

On information and belief, NEWCO FOODS had a company-wide practice of sending Mr. Ramos and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Ramos and other aggrieved employees for half of their usual or scheduled shift. For example, during his employment, when scheduled to work an eight (8) hour shift, NEWCO FOODS's managers sent Mr. Ramos home before he had an opportunity to work at least half of his scheduled shift. On information and belief, when this occurred, Mr. Ramos was only paid for the time he had worked. Although Mr. Ramos and other aggrieved employees would report to work based on the schedule that NEWCO FOODS provided to them, NEWCO FOODS would send them home before they had worked at least half of their scheduled shifts without paying them reporting time pay.

Accordingly, Mr. Ramos and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5)(A). Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, NEWCO FOODS had a company-wide policy of requiring Mr. Ramos and other aggrieved employees to utilize their own personal vehicles to carry out company business, but, on information and belief, failed to fully reimburse them for all costs of travel, including mileage. For example, on a number of instances, Mr. Ramos was required to drive to NEWCO FOODS's Jack in the Box locations as far as 25 miles away to pick up ingredients for his restaurant location. Although NEWCO FOODS required Mr. Ramos and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, NEWCO FOODS did not, on information and belief, fully reimburse them for all their travel expenses.

Second, during the relevant time period, NEWCO FOODS, on a company-wide basis, required Mr. Ramos and other aggrieved employees to obtain and pay for certain certifications, such as a ServSafe certificate, which was required for their continued employment, as well as associated costs such as training and/or examination fees. For example, Mr. Ramos complied with this requirement to obtain a ServSafe certificate, but NEWCO FOODS did not reimburse him for the costs of obtaining the certification. Thus, NEWCO FOODS failed to reimburse Mr. Ramos and other aggrieved employees for the costs of obtaining these certifications, including training and/or examination fees.

NEWCO FOODS could have provided Mr. Ramos and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles. Or, NEWCO FOODS could have reimbursed employees for their travel expenses, mileage, and certifications. Instead, NEWCO FOODS passed these operating costs onto Mr. Ramos and other aggrieved employees. At all relevant times, Mr. Ramos did not earn at least two (2) times the minimum wage.

Thus, NEWCO FOODS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Ramos and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring NEWCO FOODS into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

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

Accordingly, Mr. Ramos seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Ramos acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against NEWCO FOODS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is positioned above the printed name.

Ninel Kocharyan

Copy: NEWCO FOODS, INC. (via U.S. Certified Mail); CALTEX FOODS, INC. (via U.S. Certified Mail); FRESNO FOODS, LLC (via U.S. Certified Mail); YOSI FOODS LLC (via U.S. Certified Mail)

CAPSTONE LAW, APC
1875 Century Park East
Suite #1000
Los Angeles, CA 90067

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4917 Genesta Avenue
Encino, CA 91316

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Los Angeles, CA 90067



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Los Angeles, CA 90067

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Encino, CA 91316



9590 9402 7420 2055 5431 02

2. Article Number (transfer from service label)

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X

□ Agent
□ Addressee

3. Received by (Printed Name)

C. Date of Delivery

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- ☐ Priority Mail Express®
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5. Service Type ☐ Priority Mail Express® ☐ Registered Mail Restricted Delivery ☐ Adult Signature Restricted Delivery ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery	6. Signature Confirmation ☐ Signature Confirmation Restricted Delivery ☐ Signature Confirmation Restricted Delivery
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