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7 and all others similarly aggrieved

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/05/2025
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

CGC-25-623015

11 RAFAEL GUERRERO MENDEZ, an
12 individual, on behalf of himself and all others
similarly aggrieved,

13 Plaintiff,

14 vs.

15 ATS EATS, LLC dba Blue Barn Gourmet, a
16 California Limited Liability Company; and
DOES 1 through 25, inclusive,

17 Defendants.

Case No.:

**PAGA ENFORCEMENT ACTION
COMPLAINT**

Civil Penalties for Violations of Labor Code,
Pursuant to California's Private Attorneys General
Act ("PAGA"), §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

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1. Plaintiff brings this representative action on behalf of himself and on behalf of all Aggrieved Persons who worked as hourly, non-exempt employees for Defendant ATS EATS, INC. in California at any time during the period beginning one year and 65 days prior to the filing of this action through the present (“PAGA Period”).

2. Defendant ATS EATS operates five Blue Barn restaurant locations in California, each of which offers patrons a casual dining atmosphere, including beer and wine, as well as pick-up/to-go orders, whether placed online, on the phone, or in person. Blue Barn's is operating three San Francisco restaurants in Cole Valley, Russian Hill, and the Marina District, as well as one in Corte Madero and another in Novato.

4. Defendants fail to remit all gratuities to Plaintiffs and other non-party Aggrieved

1 Employees during the PAGA Period. Plaintiff is informed and believes, and thereon alleges, that
2 Defendants engaged in improper tip withholding practices by reducing the total tips collected by the
3 amount of the credit card transaction fees assessed on those credit card gratuities patrons left for Plaintiffs
4 and for engaging in tip pooling practices that shared gratuities with managers and/or supervisors.

5 5. These illegal practices have been in effect by Defendants since at least the start of the
6 PAGA Period.

7 6. Moreover, Defendants fail to timely compensate employees for all wages earned upon
8 separation and fail to properly and accurately calculate minimum wages and overtime wages and report
9 wages earned, hours worked, and wage rates. For these reasons, Plaintiff brings this action on behalf of
10 himself and other hourly, nonexempt employees of Defendants to recover penalties and reasonable
11 attorneys' fees and costs.

12 II. JURISDICTION AND VENUE

13 7. This is an enforcement action under the Labor Code Private Attorneys General Act of
14 2004, California Labor Code section 2698 *et seq.* ("PAGA") to recover civil penalties and any other
15 available relief on behalf of Plaintiff, the State of California, and other current and former employees
16 who work or worked for Defendants in California as non-exempt, hourly employees and who received
17 at least one wage statement during their employment, and against whom one or more violations of any
18 provision in Division 2, Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days
19 of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed, as set
20 forth in this complaint ("Aggrieved Employees"), at any time between one year and 65 days prior to the
21 filing of this amended complaint (i.e., December 19, 2023) until judgment (the "PAGA Period").
22 Plaintiff's share of civil penalties sought in this action does not exceed \$75,000.

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

26 9. This Court has jurisdiction over this action pursuant to the California Constitution,
27 Article VI, section 10. The statute under which this action is brought does not specify any other basis
28 for jurisdiction.

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

11. Venue lies properly with this Court, as it is the place where at least one defendant resides, is incorporated or has its principal place of business, or a substantial amount of the events which gave rise to this suit occurred and/or a cause of action arose. Thus, venue is proper in this Court, because 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.

12. 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

13. Plaintiff RAFAEL GUERRERO MENDEZ (“Plaintiff” or “ GUERRERO”) is or was a resident of San Francisco, California. Defendants employed Plaintiff GUERRERO as an hourly-paid, non-exempt employee for about 12 years from approximately May 2012 to September 1, 2024. GUERRERO held the position of Prep Cook/Cook/Keyholder. During his employment, Plaintiff GUERRERO worked at Defendants’ location in San Francisco, California located at 3344 Steiner Street, San Francisco, California 94123. Plaintiff GUERRERO typically worked 5-6 days per week for nine or more hours per day and at least about forty (40) hours per week. At the time Plaintiff GUERRERO’S employment ended, he was earning \$19.00 per hour plus gratuities.

1 14. Defendant ATS EATS, LLC doing business as Blue Barn Gourmet (“ATS EATS”) is, on
2 information and belief, a California Limited Liability Company doing business in California, with its
3 principal place of business located at 3344 Steiner Street, San Francisco, California 94123 and at all
4 times hereinafter mentioned, is an employer whose employees are engaged throughout this county, in
5 the State of California. ATS EATS operates five Blue Barn restaurant locations in California, each of
6 which offers patrons a casual dining atmosphere, including beer and wine, as well as pick-up/to-go
7 orders, whether placed online, on the phone, or in person. Blue Barn’s is operating three San Francisco
8 restaurants in Cole Valley, Russian Hill, and the Marina District, as well as one in Corte Madero and
9 another in Novato.

10 15. Defendants created the policies and procedures described herein and, at all times during
11 the PAGA Period, participated in, endorsed, implemented, and performed the conduct alleged herein.

12 16. The practices and policies complained of by way of this Complaint are enforced
13 throughout the State of California, including in San Francisco, California.

14 17. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
15 participation in the conduct alleged herein, of the Defendants sued as Does 1-25, inclusive, but is
16 informed and believes that said Defendants are legally responsible for the conduct alleged herein and
17 therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege
18 both the true names and capacities of the Doe Defendants when ascertained. Plaintiff is informed and
19 believes, and thereon alleges, that at all times mentioned herein, all Defendants, including Doe
20 Defendants, and each of them, were agents, servants, employees, successors in interest, and/or joint
21 venturers of their co-Defendants and were, as such, acting within the course, scope, and authority of said
22 agency, employment, and/or venture, and with the consent of their co-Defendants, and/or said acts were
23 ratified by their co-Defendants, and that each and every Defendant, as aforesaid, when acting as a
24 principal, was negligent in the selection and hiring, training, and supervision of each and every other
25 Defendant as an agent, servant, employee, successor in interest, and/or joint venturer. Plaintiff is
26 informed and believes that each Defendant acted in all respects pertinent to this action as the agent of
27 the other Defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
28 and that the acts of each Defendant are legally attributable to each of the other Defendant.

1 18. At all relevant times, Defendants, and each of them, ratified each and every act or
2 omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted
3 the acts and omissions of each and all the other Defendants in proximately causing the violations herein
4 alleged.

5 19. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in
6 some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,
7 and transactions alleged herein.

8 **IV. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

9 20. At all times relevant herein, Defendant ATS EATS operates five Blue Barn restaurant
10 locations in California, each of which offers patrons a casual dining atmosphere, including beer and
11 wine, as well as pick-up/to-go orders, whether placed online, on the phone, or in person. Blue Barn's
12 is operating three San Francisco restaurants in Cole Valley, Russian Hill, and the Marina District, as
13 well as one in Corte Madero and another in Novato.

14 21. Upon information and belief, Defendant ATS EATS is organized in California and
15 maintains its corporate operations headquarters, including Human Resources in San Francisco,
16 California. Upon information and belief, Defendants ATS EATS maintains a single, centralized
17 Human Resources ("HR") department at its operations headquarters in San Francisco, California,
18 which is responsible for conducting Defendants' recruiting and hiring of new employees, as well as
19 communicating and implementing Defendants' company-wide policies, including timekeeping
20 policies, to employees throughout California. In particular, Plaintiff and other Aggrieved Employees,
21 on information and belief, received the same standardized documents and/or written policies upon
22 hire. Upon information and belief, the use of standardized documents and/or written policies,
23 including new hire documents, indicate that Defendants dictated policies at the corporate-level and
24 implemented them company-wide, regardless of their employees' assigned locations or positions. On
25 information and belief, all transactions regarding hiring, terminations, promotions, and pay increases,
26 etc., relating to Defendants' California employees were submitted to and processed by Defendant ATS
27 EATS' HR department in San Francisco, California.

28 22. Upon information and belief, Defendant ATS EATS' corporate records, business

1 records, data, and other information related to Defendants, including, in particular, HR records
2 pertaining to Defendants' California employees, including persons staffed by third parties, are also
3 maintained at Defendant ATS EATS' operations headquarters in San Francisco, California.

4 23. At all times relevant herein, Plaintiff was employed by Defendants as an hourly,
5 nonexempt employee in the positions of Prep Cook, Cook, and Keyholder in California during the
6 PAGA Period.

7 24. At all times relevant herein, Plaintiff and other non-party Aggrieved Employees were
8 assigned to and required and permitted to work without pay while performing tasks including, but not
9 limited to: unlocking the restaurant doors to open the restaurant to employees and locking the doors at
10 the end of business hours and again to let employees out at the closing of the restaurant; greeting and
11 seating guests; taking customers' orders; running food and bar drinks to customers; pre-bussing and
12 bussing tables; preparing salads and sandwiches and other food items; cooking food on the grill; cleaning
13 the kitchen stations; processing customers' payments; customer service; training new servers;
14 dishwashing; and taking out the trash. Plaintiff and other non-party Aggrieved Employees were not
15 properly compensated for some of this work.

16 25. At all times relevant herein, Plaintiff and other non-party Aggrieved Employees worked
17 a substantial amount of time while off-the-clock—meaning they were not punched in for work or were
18 not permitted to record this work—and therefore, those working hours were not recorded and then
19 compensated. This off-the-clock time primarily occurred because Plaintiff and other non-party
20 Aggrieved Employees spent compensable time (1) locking and unlocking the restaurant off-the-clock
21 along with other closing duties like discarding trash, including employees' wait times to be let out of
22 the restaurant on closing shifts; (2) after clocking out at the end of their pre-scheduled shift times because
23 being clocked in past those hours was discouraged, and Blue Barn had conflicting policies, which were
24 to complete all duties before leaving and to clock out at your scheduled shift-end regardless of whether
25 work remained that must be completed. Because working past those hours was discouraged but in light
26 of the conflicting policies, Plaintiff and other non-party Aggrieved Employees were instructed to not
27 record that extra time but rather report their scheduled shift-end on the timeclock. Plaintiff and other
28

1 non-party Aggrieved Employees' off-the-clock time was never subsequently added and, therefore,
2 remains uncompensated.

3 26. At all times relevant herein, Defendants did not record Plaintiff and other non-party
4 Aggrieved Employees' actual start and stop times for meal periods and shift-end times nor did
5 Defendants establish a mechanism by which Aggrieved Employees could report missed, late, or short
6 meal periods on a daily basis.

7 27. At all times relevant herein, Plaintiff and other non-party Aggrieved Employees were
8 required to perform work during their meal periods in the form of continuing to perform their assigned
9 services that cut into their 30-minute meal periods, largely because of high volumes of customers and
10 orders that occurred during their meal periods. Defendants do not compensate Plaintiff and other non-
11 party Aggrieved Employees for this compensable time worked off the clock. These high volumes of
12 customers and orders that occurred during their meal periods also caused Plaintiff and other non-party
13 Aggrieved Employees to commence their meal periods late—after the end of the fifth hour.

14 28. Likewise, at all times relevant herein, Plaintiff and other non-party Aggrieved
15 Employees' meal periods and rest breaks were noncompliant because they were not off-duty because
16 Plaintiff and other non-party Aggrieved Employees were required to address the high volumes of
17 customers and orders that occurred during their meal periods and were regularly interrupted with such
18 demands that required returning to work early from their rest breaks. This meal periods and rest breaks
19 were noncompliant and not cured by premium compensation, and the meal periods were also not
20 compensated for purposes of Defendants' obligation to pay minimum wages for all hours worked.

21 29. At all times relevant herein, Plaintiff and other non-party Aggrieved Employees were
22 assigned to and required to work for periods lasting in excess of five hours and were not authorized nor
23 permitted to take full-length 30-minute, uninterrupted, off-duty meal periods. Accordingly, Plaintiff's
24 and Aggrieved Employees' meal periods were on-duty for which Defendants failed to compensate
25 Plaintiff and other non-party Aggrieved Employees with (1) premium pay for meal periods under 30
26 minutes and (2) the time worked that was on-duty during these meal periods.

27 30. At all times relevant herein, Plaintiff and other non-party Aggrieved Employees were
28 assigned to and required and permitted to work shifts lasting over four hours and were not authorized

nor permitted to take all of their full, net 10-minute rest breaks during each shift or 4-hour work period.

31. At all times relevant herein, Defendants failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take full, net 10-minute rest breaks during the PAGA Period. At the direction of Defendants and/or Defendants' knowledge and acquiescence, Plaintiff and other non-party Aggrieved Employees routinely missed their entire 10-minute rest breaks, at least once per shift. Accordingly, all rest breaks were noncompliant for which Defendants should have compensated Plaintiff and other non-party Aggrieved Employees with premium pay for noncompliant rest breaks but failed to do so.

32. At all times relevant herein, Plaintiff and other non-party Aggrieved Employees worked in excess of eight hours per workday or 40 hours per work week. Defendants failed to 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 under-recording and underreporting Plaintiff's and Aggrieved Employees' true 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.

33. During the PAGA Period, Defendants require their hourly, nonexempt employees to perform compensable work while off the clock, including performing compensable work during their meal periods. Accordingly, during the PAGA Period, Defendants did not provide minimum wages and overtime pay for this time worked off-the-clock that Plaintiff and Aggrieved Employees endured.

34. 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.

1 35. Supervisors employed by Defendants, including at Plaintiff's location, had knowledge of
2 and required Plaintiff to perform compensable work during meal periods. Supervisors throughout
3 California were aware that Plaintiff and others similarly situated were performing work during these
4 times without proper wages or overtime compensation.

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

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

13 38. At all times relevant herein, Defendants failed to pay Plaintiff and other non-party
14 Aggrieved Employees for all hours worked. Thus, Defendants did not pay Plaintiff and other non-party
15 Aggrieved Employees minimum wages in accordance with law and, because Aggrieved Employees
16 were not compensated for time worked during meal periods, for shifts worked over eight hours in
17 duration, Defendants also did not pay nonexempt employees all overtime wages in accordance with law.

18 39. Defendants' conduct, as alleged herein, has caused Plaintiff and other non-party
19 Aggrieved Employees damages including, but not limited to, loss of wages and compensation.
20 Defendants are liable for civil penalties under PAGA to Plaintiff and Aggrieved Employees for failing
21 to pay minimum wages, failing to pay overtime wages, failing to pay all wages owed every pay period,
22 failing to remit all gratuities, failing to provide timely and accurate wage statements, failing to pay all
23 wages owed upon separation, and unfair competition.

24 40. Plaintiff has complied with the procedures for bringing suit specified in California Labor
25 Code section 2699.3. By letter dated December 19, 2024, Plaintiff gave written notice by certified mail
26 to the Labor and Workforce Development Agency ("LWDA"), and Defendants, of the specific
27 provisions of the Labor Code alleged to have been violated, including the facts and theories to support
28 the alleged violations.

41. Plaintiff is a member of and seeks to be the representative for the group of similarly aggrieved employees who all have been exposed to, have suffered, and/or were permitted to work under Defendants' unlawful employment practices as alleged herein.

V. FIRST CAUSE OF ACTION

For Civil Penalties Pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”),
§§ 2698, *et seq.*, for Violations of California Labor Code Sections
(Brought by Plaintiff on Behalf of Himself and the General Public Against All Defendants)

42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

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

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

45. Plaintiff and other current and former employees of Defendants are “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

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

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

- b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The LWDA shall provide notice ("LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

- a. The aggrieved employee shall give written notice by online filing ("Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee's Notice filed with the LWDA is accompanied by a \$75 filing fee; and
- c. The employer may cure the alleged violation within 33 calendar days of the postmark date of the Employee's Notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

48. On December 19, 2024, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's notice to the LWDA was accompanied by the \$75 filing fee. A true and correct copy of Plaintiff's written notice to the LWDA and ATS EATS, LLC dated December 19, 2024 is attached hereto as "**Exhibit 1.**" Exhibit 1 is incorporated into this Complaint by

1 reference.

2 49. As of the filing date of the initial complaint, over 65 days have passed since Plaintiff sent
3 the LWDA Notice described above, and the LWDA has not responded that it intends to investigate
4 Plaintiff's claims. Defendants have not given notice that it has cured the alleged violations set forth in
5 this Complaint. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code
6 section 2699.3(a) and (c) to recover civil penalties against all defendants, in addition to other remedies,
7 for violations of California Labor Code sections 201, 202, 203, 204, 226.7, 351, 510, 512(a), 1174(d),
8 1182.12, 1194, 1197, 1197.1, and 1198.

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

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

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

- 23 a. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
24 Order(s) for Defendants' failure to provide Plaintiff and other non-party Aggrieved
25 Persons with compliant meal periods and/or rest breaks, as set forth above;
- 26 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
27 IWC Wage Order(s) for Defendants' failure to compensate Plaintiff and other non-party
28 Aggrieved Persons with at least minimum wages for all hours worked as set forth above;

- 1 c. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
2 Defendants' failure to compensate Plaintiff and other non-party Aggrieved Persons with
3 overtime wages for all hours worked in excess of eight in one day or 40 in one week and
4 double time for all hours worked in excess of 12 hours, as set forth above;
- 5 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)
6 for failure to provide accurate and complete wage statements to Plaintiff and other non-
7 party Aggrieved Persons as set forth above;
- 8 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s)
9 for failure to maintain payroll records. California Labor Code section 1198 provides that
10 the maximum hours of work and the standard conditions of labor shall be those fixed by
11 the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section
12 1198 further provides that "[t]he employment of any employees for longer hours than
13 those fixed by the order or under conditions of labor prohibited by the order is unlawful."
14 Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate
15 time records showing when the employee begins and ends each work period and meal
16 period. During the relevant time period, Defendants failed, on a companywide basis, to
17 keep records of meal period start and stop times for Plaintiff and other non-party
18 Aggrieved Persons in violation of section 1198. California Labor Code section 1174(d)
19 provides that "[e]very person employing labor in this state shall . . . [k]eep a record
20 showing the names and addresses of all employees employed and the ages of all minors"
21 and "[k]eep, at a central location in the state or at the plants or establishments at which
22 employees are employed, payroll records showing the hours worked daily by and the
23 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
24 paid to, employees employed at the respective plants or establishments" During the
25 relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully
26 failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved
27 Persons showing the daily hours they actually worked and the wages paid thereto as a
28 result of failing to record the off-the-clock hours that they worked;

- 1 f. Violations of Labor Code section 204 for failure to pay all earned wages during
2 employment as set forth above;
- 3 g. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
4 upon termination as set forth above;
- 5 h. Violations of Labor Code section 351 for failure to remit all gratuities to Plaintiff and
6 other non-party Aggrieved Persons as set forth above;
- 7 i. Plaintiff and other non-party Aggrieved Persons are therefore entitled to recover penalties,
8 attorneys' fees, costs, and interest thereupon, pursuant to Labor Code section 2699(f)-(g);
9 and
- 10 j. Any and all additional applicable civil penalties and sums as provided by the California
11 Labor Code and/or other relevant statutes.

12 53. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558,
13 Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of
14 civil penalties for himself, all other non-party aggrieved employees, and the State of California Against
15 All Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202,
16 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

17 54. In addition, Plaintiff seeks and is entitled to sixty-five percent (65%) of all penalties
18 obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of
19 employers and employees about their rights and responsibilities under the California Labor Code, and
20 thirty-five percent (35%) to all aggrieved employees.

21 55. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to
22 California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 **VIOLATION OF CAL. LABOR CODE §§ 512, 226.7; IWC WAGE ORDER NO. 5-2001, § 11**

25 56. Plaintiff hereby re-alleges and incorporates by reference all paragraphs of this Complaint
26 as if fully set forth herein.

27 57. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California
28 Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and other non-party Aggrieved

1 Employees' employment by Defendants.

2 58. At all relevant times herein set forth, California Labor Code section 512(a) provides that
3 an employer may not require, cause, or permit an employee to work for a period of more than five (5)
4 hours per day without providing the employee with a meal period of not less than thirty (30) minutes,
5 except that if the total work period per day of the employee is not more than six (6) hours, the meal period
6 may be waived by mutual consent of both the employer and the employee. Under California law, first
7 meal periods must start after no more than five (5) hours. *Brinker Rest. Corp. v. Superior Court*, 53
8 Cal.4th 1004, 1041–1042 (Cal. 2012).

9 59. California Labor Code sections 226.7(a) and 512(a) provide that no employer shall require
10 any employee to work during any meal or rest period mandated by an applicable order of the Industrial
11 Welfare Commission.

12 60. IWC Wage Order No. 5-2001 (11)(A) provides, in pertinent part: “No employer shall
13 employ any person for a work period of more than five (5) hours without a meal period of not less than
14 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
15 the meal period may be waived by mutual consent of the employer and the employee.”

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

24 62. Defendants did not provide Plaintiff and other Aggrieved Employees with legally
25 compliant, off-duty meal periods, because Plaintiff and other Aggrieved Employees regularly
26 commenced their meal periods late—after the end of the fifth hour.

27 63. Defendants also did not schedule second meal periods and had no policy for permitting
28 and authorizing Plaintiff and other employees to take second 30-minute meal periods on days they

1 worked in excess of 10 hours in one day. Because of Defendants' companywide practice of denying
2 hourly, nonexempt employees second 30-minute meal periods, Plaintiff and other Aggrieved Employees
3 were not relieved of all duties such that they could take full-length second 30-minute meal periods and
4 instead had to work during a portion of that time allotted for meal periods. Accordingly, Defendants
5 failed to provide all meal periods in violation of California Labor Code sections 226.7 and 512.
6 Defendants knew or should have known that their companywide adoption of the requirement that
7 employees skip their meal period without executing waivers to do so would result in a failure to provide
8 Plaintiff and other Aggrieved Employees with full and timely meal periods as required by the applicable
9 IWC Wage Order(s) and Labor Code sections 226.7 and 512(a). Furthermore, Plaintiff and other
10 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to meal
11 periods but were not relieved of all duties.

12 64. Moreover, Defendants engaged in a systematic, companywide policy to not pay meal
13 period premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Aggrieved
14 Employees one additional hour of premium pay for missed meal periods, Defendants did not pay Plaintiff
15 and other Aggrieved Employees at the correct rate of pay for premium wages because Defendants failed
16 to include all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary
17 bonuses, in the regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other
18 Aggrieved Employees premium pay for missed meal periods, it did so at a lower rate than required by
19 law. As a result, Defendants failed to provide Plaintiff and other Aggrieved Employees compliant meal
20 periods and failed to pay the full meal period premiums due, in accordance with California Labor Code
21 sections 204, 210, 226.7, and 512.

22 65. By their actions in requiring their employees to work during a portion of their meal periods
23 and/or their failure to timely relieve nonexempt, hourly, nonexempt employees of their duties for their
24 off-duty meal periods, Defendants have violated California Labor Code section 226.7 and section 11 of
25 IWC Wage Order No. 5-2001 and are liable to Plaintiff and Aggrieved Employees.

26 66. As a result of the unlawful acts of Defendants, Plaintiff and Aggrieved Employees have
27 been deprived of timely off-duty meal periods and are entitled to recover civil penalties under PAGA for
28 their violations of Labor Code section 226.7(b) and section 11 of IWC Wage Order No. 5-2001, for each

1 pay period in which Defendants failed to provide their hourly, nonexempt employees with timely,
2 statutory, off-duty meal periods.

3 **FAILURE TO PROVIDE REST BREAKS**
4 **IN VIOLATION OF CAL. LABOR CODE §§ 226.7, 512, AND 1194;**
5 **IWC WAGE ORDER NO. 5-2001, § 12**

6 67. At all relevant times, the applicable IWC Wage Order and California Labor Code sections
7 226.7 and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by
8 Defendants.

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

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

19 70. IWC Wage Order No. 5-2001, section (12)(B) provides, "If an employer fails to provide
20 an employee with a rest period in accordance with the applicable provisions of this order, the employer
21 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each
22 workday that the rest period is not provided."

23 71. As alleged herein, Defendants failed to authorize and permit compliant rest breaks during
24 the PAGA Period. Plaintiff and other non-party Aggrieved Employees were routinely required to work
25 during their entire rest breaks at the direction of Defendants and/or with Defendants' knowledge and
26 acquiescence.

27 72. Furthermore, Defendants' staffing and job-assignment policies required employees to
28 forgo all of their 10-minute rest breaks, entirely preventing Plaintiff and other non-party Aggrieved

1 Employees from being relieved of all duty in order to take compliant rest breaks; these practices forced
2 Plaintiff and other Aggrieved Employees to remain on duty for part, if not all, of their rest breaks. That
3 is, Plaintiff and other non-party Aggrieved Employees' rest breaks were noncompliant because they were
4 not off-duty. As a result, Plaintiff and other non-party Aggrieved Employees would work shifts in excess
5 of 3.5 hours without the net 10-minute rest breaks to which they were entitled. More specifically,
6 throughout his employment, during 8-hour or longer shifts, Plaintiff and other non-party Aggrieved
7 Employees regularly worked during the entirety of their 10-minute rest breaks by using that time to
8 continue performing work for Defendants.

9 73. At the same time, Defendants implemented a companywide policy to not pay rest break
10 premiums. Alternatively, to the extent that Defendants did pay Plaintiff and other Aggrieved Employees
11 one additional hour of premium pay for missed rest breaks, Defendants did not pay Plaintiff and other
12 Aggrieved Employees at the correct rate of pay for premium wages because Defendants failed to include
13 all forms of compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in the
14 regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other Aggrieved Employees
15 premium pay for missed rest breaks, it did so at a lower rate than required by law. As a result, Plaintiff
16 and other Aggrieved Employees were denied compliant rest breaks and Defendants failed to pay the full
17 rest break premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage
18 Order(s).

19 74. Defendants' unlawful conduct alleged herein occurred in the course of employment of
20 Plaintiff and all others similarly situated and such conduct has continued through the filing of the initial
21 Complaint.

22 75. As a direct and proximate result of Defendants' unlawful action, Plaintiff and Aggrieved
23 Employees have been deprived of full-length 10-minute rest breaks and/or were not paid for rest breaks
24 taken during the PAGA Period and are entitled to recover civil penalties under PAGA for violations of
25 Labor Code section 226.7(b) for each pay period in which Defendants failed to provide employees with
26 compliant and/or paid rest breaks.

27 ///

28 ///

FAILURE TO PAY MINIMUM WAGES
VIOLATION OF CAL. LABOR CODE §§ 510, 1194, 1194.2,
AND 1197; IWC WAGE ORDER NO. 5-2001, § 4

76. 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.”

77. Labor Code section 1197 provides: “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

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

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

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

81. Pursuant to IWC Wage Order No. 5-2001, section (2)(H), at all times material hereto, “hours worked” includes “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

1 so.”

2 82. At all times relevant during the liability period, under the provisions of IWC Wage Order
3 No. 5-2001, Plaintiff and each Aggrieved Employee should have received not less than the minimum
4 wage in a sum according to proof for the time worked but not compensated.

5 83. For all hours that Plaintiff and other non-party Aggrieved Employees worked, they are
6 entitled to not less than the California minimum wage.

7 84. At all times relevant during the liability period, Defendants willfully failed and refused,
8 and continue to willfully fail and refuse, to pay Plaintiff and other non-party Aggrieved Employees the
9 amounts owed.

10 85. As described above, Plaintiff and other Aggrieved Employees regularly started and ended
11 their shifts by performing compensable work that was not recorded, so in those instances, they were
12 instructed to not record that extra time but rather report their scheduled shift start time on the timeclock.

13 86. As described above, Defendants required Plaintiff and other Aggrieved Employees to
14 work during their meal periods to address high volumes of customers and orders for the benefit of
15 Defendants. Also, Defendants did not pay at least minimum wages for off-the-clock hours that qualified
16 for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for
17 overtime premium pay, Defendants did not pay at least minimum wages for those hours worked off-the-
18 clock.

19 87. Defendants’ unlawful conduct alleged herein occurred in the course of employment of
20 Plaintiff and all other non-party Aggrieved Employees, and Defendants have done so continuously
21 throughout the filing of this complaint.

22 88. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
23 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.
24 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties
25 pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

26 **FAILURE TO PAY OVERTIME WAGES**

27 **VIOLATION OF CAL. LABOR CODE §§ 510 AND 1194, IWC WAGE ORDER NO. 5-2001, § 3**

28 89. Pursuant to section 3 of IWC Wage Order No. 5-2001; California Code of Regulations,

1 Title 8, Chapter 5, section 11040, section 12; and Labor Code sections 200, 204, 226, 500, 510, 512,
2 1194, and 1198, Defendants were required to compensate Plaintiff and other non-party Aggrieved
3 Employees for all overtime hours worked, which is calculated at one and one-half (1½) times the regular
4 rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week, and for the first
5 eight hours on the seventh consecutive work day, with double time after eight hours on the seventh day
6 of any work week, or after 12 hours in any work day.

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

15 91. Under the aforementioned Wage Orders, statutes, and regulations, Plaintiff and other non-
16 party Aggrieved Employees were entitled to one and one-half (1½) times and/or double their regular rate
17 of pay for overtime work performed during the four years preceding the filing of this Complaint, based
18 on appropriate calculations of the "total remuneration" for each workweek.

19 92. In violation of state law, Defendants have knowingly and willfully refused to perform
20 their obligations to compensate Plaintiff and Aggrieved Employees for all wages earned and all hours
21 worked. As a direct result, Plaintiff and Aggrieved Employees have suffered, and continue to suffer,
22 substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and
23 expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under
24 state law.

25 93. Defendants committed the acts alleged herein knowingly and willfully, with the wrongful
26 and deliberate intention of injuring Plaintiff and Aggrieved Employees, from improper motives
27 amounting to malice, and in conscious disregard of Plaintiff's rights and the rights of all other Aggrieved
28 Employees.

1 94. Defendants' conduct described herein violates IWC Wage Order No. 5-2001; California
2 Code of Regulations, Title 8, section 11040, section 12; and Labor Code sections 200, 226, 500, 510,
3 512, and 1198. Therefore, Plaintiff and Aggrieved Employees are entitled to recover civil penalties under
4 PAGA, plus attorneys' fees, expenses, and costs of suit for these Labor Code violations.

5 **FAILURE TO PAY ALL WAGES OWED UPON SEPARATION**

6 **VIOLATION OF CAL. LABOR CODE §§ 201–203**

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

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

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

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

22 99. At all times relevant during the liability period, Plaintiff and all other Aggrieved
23 Employees were employees of Defendants covered by Labor Code section 203. Pursuant to Labor Code
24 section 201, upon Plaintiff's and the Aggrieved Employees' separation dates, Defendants were required
25 to pay Plaintiff and the Aggrieved Employees all wages earned. Plaintiff was terminated, however,
26 Defendants did not pay his final wages immediately but rather paid his final wages approximately one
27 week following his termination, in violation of Labor Code section 201.

28 100. At the time of Plaintiff's and the Aggrieved Employees' respective separation dates,

1 Plaintiff and other non-party Aggrieved Employees had unpaid wages. Defendants willfully failed to
2 pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants for their
3 uncompensated hours, uncompensated overtime, and missed, untimely, or on-duty meal periods and rest
4 breaks upon their termination or separation from employment with Defendants as required by California
5 Labor Code sections 201 and 202. Thus, in violation of Labor Code section 201, Defendants failed to
6 pay Plaintiff and the Aggrieved Employees the full amount of wages due and owing them, in amounts to
7 be proven at the time of trial, but in excess of the jurisdictional minimum of this Court.

8 101. Defendants' failure to pay Plaintiff and Aggrieved Employees respective wages due and
9 owed to them was willful, and done with the wrongful and deliberate intention of injuring Plaintiff and
10 the Aggrieved Employees and in conscious disregard of their rights.

11 102. Defendants' willful failure to pay former employee Plaintiff and Aggrieved Employees
12 all of the wages due and owing them constitutes violations of Labor Code sections 201 and 203, which
13 provide that an employee's wages will continue as a penalty up to 30 days from the time the wages were
14 due. Therefore, former employee Plaintiff and the Aggrieved Employees are each entitled to civil
15 penalties pursuant to section 2699(a), (t), and (g).

16 **FAILURE TO ISSUE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

17 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

22 104. During the relevant time period, Defendants have knowingly and intentionally provided
23 Plaintiff and other non-party Aggrieved Employees with uniform, incomplete and inaccurate wage
24 statements. The wage statement deficiencies include, among other things, failing to list the correct gross
25 tips earned; failing to list the correct gross wages earned; failing to list the correct total hours worked by
26 employees; failing to list all applicable hourly rates in effect during the pay period, including overtime
27 rates of pay, and the corresponding number of hours worked at each hourly rate; failing to list the correct
28 net wages earned; failing to list the correct name of the legal entity that is the employer (the name is

1 missing a comma); and/or failing to state all hours worked as a result of not recording or stating the hours
2 they worked off-the-clock.

3 105. California Labor Code section 1198 provides that the maximum hours of work and the
4 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
5 applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees
6 for longer hours than those fixed by the order or under conditions of labor prohibited by the order is
7 unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time
8 records showing when the employee begins and ends each work period and meal period. During the
9 relevant time period, Defendants failed, on a company-wide basis, to keep records of meal period start
10 and stop times for Plaintiff and other non-party Aggrieved Employees in violation of section 1198.

11 106. California Labor Code section 1174(d) provides that “[e]very person employing labor in
12 this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the
13 ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at which
14 employees are employed, payroll records showing the hours worked daily by and the wages paid to, and
15 the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
16 the respective plants or establishments” During the relevant time period, and in violation of Labor
17 Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and
18 other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
19 as a result of failing to record the off-the-clock hours that they worked.

20 107. Because Defendants’ violations of 226(a) and 1174(d) were committed against Plaintiff
21 and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved Employees are
22 entitled to recover civil penalties pursuant to sections 226(e), 226.3, 1174.5, and/or 2699(a), (f), and (g).

23 **FAILURE TO REMIT ALL GRATUITIES**

24 **VIOLATION OF CAL. LABOR CODE § 351**

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

28 109. Further, “[a]n employer that permits patrons to pay gratuities by credit card shall pay the

1 employees the full amount of the gratuity that the patron indicated on the credit card slip, without any
2 deductions for any credit card payment processing fees or costs that may be charged to the employer by
3 the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the
4 employees not later than the next regular payday following the date the patron authorized the credit card
5 payment.”

6 110. During the applicable statutory PAGA Period, Plaintiff and other non-party Aggrieved
7 Employees earned gratuities from Defendants’ customers.

8 111. Upon information and belief, Defendants reduced the gratuities disbursed to Plaintiffs and
9 other non-party Aggrieved Employees by the associated credit card transaction fees assessed on the
10 amounts patrons paid for gratuities via credit card. As such, Defendants collected, took, or received
11 gratuities or parts thereof that patrons paid, gave to, or left for Plaintiffs and other non-party Aggrieved
12 Employees.

13 112. Upon information and belief, Defendants engaged in improper tip pooling practices by
14 including managerial employees who were not entitled to participate in the tip pool and/or excluding
15 employees who were entitled to participate in the tip pool.

16 113. Defendants violated Labor Code section 351 by collecting, taking, or receiving any
17 gratuity or a part thereof that was paid, given to, or left for Plaintiffs and the Class by patrons.

18 114. Plaintiff and other non-party Aggrieved Employees are entitled to recover all available
19 civil penalties under PAGA, plus attorneys’ fees, expenses, and costs of suit for these violations of
20 California Labor Code section 351.

21 **FAILURE TO KEEP AND MAINTAIN REQUIRED RECORDS**

22 **VIOLATION OF CAL. LABOR CODE §§ 226, 1174; IWC WAGE ORDER NO. 9-2001, § 7**

23 115. During the PAGA Period, as part of Defendants’ illegal payroll policies and practices to
24 deprive Plaintiff and other non-party Aggrieved Employees of all wages earned and due, Defendants
25 knowingly and intentionally failed to maintain records as required under California Labor Code sections
26 226 and 1174, and IWC Wage Order No. 5-2001, section 7, including but not limited to the following
27 records: total daily hours worked by each employee; applicable rates of pay; actual meal period times;
28 time records showing when each employee begins and ends each work period; and correct gross

1 gratuities. Namely, Defendants did not record Plaintiff and other non-party Aggrieved Employees' actual
2 start and stop times for meal periods and for shifts nor did Defendants establish a mechanism by which
3 Aggrieved Employees could report missed, late, or short meal periods on a daily basis.

4 116. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and other
5 non-party Aggrieved Employees have been damaged in an amount according to proof at trial, and are
6 entitled to all available civil and statutory penalties and an award of costs, expenses, and reasonable
7 attorneys' fees, including but not limited to those provided in California Labor Code section 226(e), as
8 well as other available remedies.

9 **VI. PRAYER FOR RELIEF**

10 Plaintiff, on all others similarly situated and also on behalf of the general public, respectfully for
11 relief and judgment against Defendants, jointly and severally, as follows:

- 12 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000).
13 2. For any other remedies available under PAGA.

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

15 3. That the Court declare, adjudge, and decree that Defendants violated the following California
16 Labor Code sections as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by
17 failing to pay all overtime wages); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least
18 minimum wages for all hours worked); 226.7, 512(a), and 1198 (by failing to provide meal or rest
19 periods); 226(a) and 1198 (by failing to provide accurate and complete wage statements); 1174(d) and
20 1198 (by failing to maintain accurate and complete payroll records); 201, 202, and 203 (by failing timely
21 to pay all unpaid wages upon termination); 351 (by failing to remit all gratuities); and 204 (by failing
22 timely to pay all earned wages during employment);

23 4. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 558, 1174.5,
24 1197.1, 2699(a), and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203,
25 204, 226(a), 226.7, 351 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

26 5. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any
27 and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202,
28 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

6. For pre-judgment and post-judgment interest as provided by law; and
7. For such other and further relief as the Court may deem equitable and appropriate.

Dated: March 5, 2025

ABRAMSON LABOR GROUP

By: 
Cheryl A. Kenner

Attorneys for Plaintiff RAFAEL GUERRERO
MENDEZ and all others similarly aggrieved

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff RAFAEL GUERRERO MENDEZ, on behalf of himself and all others similarly aggrieved,
3 hereby demands a jury trial with respect to all issues triable of right by jury.
4

5 Dated: March 5, 2025

ABRAMSON LABOR GROUP

6
7 By: 
8 Cheryl A. Kenner

9 Attorneys for Plaintiff RAFAEL GUERRERO
10 MENDEZ and all others similarly aggrieved
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EXHIBIT 1



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Cheryl.K@abramsonlabor.com
www.AbramsonLaborGroup.com

December 19, 2024

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

ATS Eats, LLC
Attn: Legal Department
3344 Steiner St.
San Francisco, CA 94123

ATS Eats, LLC
Attn: Legal Department
901 Cole Street
San Francisco, CA 94117

ATS Eats, LLC
Attn: Legal Department
2215 Chestnut St., Suite 2
San Francisco, CA 94123

ATS Eats, LLC
Attn: Legal Department
335 Corte Madera Town Center
Corte Madera, CA 94925

ATS Eats, LLC
Attn: Legal Department
2237 Polk Street
San Francisco CA 94109

ATS Eats, LLC
Attn: Legal Department
819 Grant Avenue
Novato, CA 94945

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

To: The California Labor and Workforce Development Agency; ATS Eats, LLC doing
business as Blue Barn Gourmet

From: Rafael Guerrero Mendez, on behalf of himself 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 employee Rafael Guerrero Mendez ("Mr. Guerrero") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Guerrero, "Claimants") who have been

injured by ATS Eats, LLC doing business as Blue Barn Gourmet (“Blue Barn”) violations of the California Labor Code. Mr. Guerrero, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Blue Barn, 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:

Blue Barn operates five Blue Barn restaurant locations in California, each of which offers patrons a casual dining atmosphere, including beer and wine, as well as pick-up/to-go orders, whether placed online, on the phone, or in person. Blue Barn’s is operating three San Francisco restaurants in Cole Valley, Russian Hill, and the Marina District, as well as one in Corte Madero and another in Novato.

Claimant Mr. Guerrero worked at Blue Barn’s San Francisco location from approximately May 2012 to September 1, 2024 as an hourly, nonexempt employee in the positions of Prep Cook/Cook/Keyholder (earning \$19.00 per hour plus pooled gratuities). Mr. Guerrero, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were generally engaged in serving restaurant patrons and providing labor at Blue Barn’s various restaurant locations. As part of his employment with Blue Barn, Mr. Guerrero and 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, unlocking the restaurant doors to open the restaurant to employees and locking the doors at the end of business hours and again to let employees out at the closing of the restaurant; greeting and seating guests; taking customers’ orders; running food and bar drinks to customers; pre-bussing and bussing tables; preparing salads and sandwiches and other food items; cooking food on the grill; cleaning the kitchen stations; processing customers’ payments; customer service; training new servers; dishwashing; and taking out the trash.

Claimant Mr. Guerrero regularly worked 5-6 days per week for 9 hours or more hours per day. During the entire course of his employment, Blue Barn failed to provide Mr. Guerrero and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Blue Barn has also failed to remit all gratuities paid by customers and failed to pay minimum wages to Mr. Guerrero 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, Blue Barn 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, Blue Barn 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.

Blue Barn has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Blue Barn has failed and continues to fail to provide timely, accurate wage statements to Mr. Guerrero and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Blue Barn, including Mr. Guerrero, Blue Barn violated Labor Code section 203 by failing to timely pay all wages due upon separation. Mr. Guerrero is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Guerrero intend to bring an

action against Blue Barn under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

Claimant Mr. Guerrero was employed by Blue Barn from approximately May 2012 to September 1, 2024 as an hourly, nonexempt employee holding the positions of Prep Cook/Cook/Keyholder. For a period of at least four (4) years prior to August 2024, but for our purposes here, one (1) year prior, Blue Barn 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**. Blue Barn 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 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 (1) locking and unlocking the restaurant off-the-clock along with other closing duties like discarding trash, including employees’ wait times to be let out of the restaurant on closing shifts; (2) after clocking out at the end of their pre-scheduled shift times because being clocked in past those hours was discouraged, and Blue Barn had conflicting policies, which were to complete all duties before leaving and to clock out at your scheduled shift-end regardless of whether work remained that must be completed. Consequently, Claimants clocked out and continued working to complete any remaining tasks such as taking out the trash, cleaning, locking the doors so patrons cannot enter, as set forth earlier. 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 compensable work while clocked out, 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 continue working while clocked out, and as explained in the two paragraphs to follow, to take meal periods late and to skip all rest breaks. In effect, these policies and practices cause Claimants to have noncompliant meal periods and to remain on-duty during rest breaks, and therefore, constitute a failure on Blue Barn’s part to provide compliant rest breaks. With that, Blue Barn’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 Blue Barn’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, Blue Barn’s failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks,

¹ Without limitation, Mr. Guerrero, 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.

as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. 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, Blue Barn failed to authorize and permit timely, full-length meal periods for Mr. Guerrero 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. Mr. Guerrero and all similarly aggrieved persons were regularly unable to timely commence their 30-minute meal periods—before the end of the fifth hour. Despite that, Blue Barn 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. In fact, Mr. Guerrero’s final—or near final—paycheck issued August 23, 2024 reveals that Blue Barn failed to pay him a single meal period premium the entire year. Accordingly, since Blue Barn required Mr. Guerrero and others similarly situated to commence their meal periods late 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**. Blue Barn failed to authorize and permit Mr. Guerrero 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. Blue Barn enforced a policy that did not permit Claimants from taking any of their rest breaks because the restaurant was very busy and would be short-staffed if personnel took rest breaks. As such, 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. Blue Barn 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. In fact, Mr. Guerrero’s final—or near final—paycheck issued August 23, 2024 reveals that Blue Barn failed to pay him a single rest break premium the entire year. 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 Blue Barn 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, Blue Barn 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 12 hours per workday and eight hours on the seventh day of a workweek. Mr. Guerrero occasionally worked and Claimants regularly worked overtime hours. Blue Barn 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, Blue Barn failed to provide Mr. Guerrero 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 Blue Barn by credit card companies. Cal. Lab. Code § 351. Labor Code section provides in pertinent part that “[n]o 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, or deduct any amount from wages due an employee on account of a gratuity. . . . Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An 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.” Blue Barn failed to remit all gratuities owed to Claimants, including Mr. Guerrero, as required by Labor Code section 351. First, Blue Barn engaged in improper tip withholding practices by reducing the gratuities collected by the amount credit card companies assessed to Blue Barn on those particular transactions. Second, Blue Barn pooled tips and included in those tip pools supervisors who are not entitled to share in the tip pool. 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 Blue Barn, including Mr. Guerrero, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within 72 hours (resignation without notice). Claimants, including Mr. Guerrero, did not receive his final pay of all wages within the requisite time based on the circumstances of his separation nor did he receive all wages Blue Barn owed Mr. Guerrero based on Blue Barn’s prior failings to pay all wages owed every pay period, including but not limited to minimum and overtime wages, all meal and rest premiums owed, and all gratuities customers paid, as explained above. On September 8, 2024, Blue Barn paid Mr. Guerrero his final wages seven days after his termination on September 1, 2024 via direct deposit at the time of Blue Barn’s regular payroll schedule, not immediately upon termination as required by law.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Blue Barn pursuant to Labor Code section 226. First, Mr. Guerrero’s wage statements do not reflect the correct legal name of Defendant—ATS Eats, LLC—his paystubs are missing the comma. Second, because Blue Barn 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.

Blue Barn’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 timely pay all wages upon separation violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512, 1182.12, 1194, and 1197, 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. Guerrero, 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 Blue Barn 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, and 1198.

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 script is fluid and cursive, with the first name "Cheryl" and last name "Kenner" clearly distinguishable.

Cheryl A. Kenner