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Attorneys for Plaintiff DEMARCO EVANS, individually,  
and on behalf of himself and all others similarly situated

[Additional counsel on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SACRAMENTO**

PALOMA SCALISE, ANNA CARDOSO,  
and DEMARCO EVANS, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

CHIPOTLE SERVICES LLC, DBA  
CHIPOTLE MEXICAN GRILL, INC.; and  
Does 1 through 20, inclusive,

Defendants.

Case No. 23CV006629

Assigned to: Hon. Lauri A. Damrell  
Dept. 22

**DECLARATION OF JAMES R.  
HAWKINS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
AND REPRESENTATIVE ACTION  
SETTLEMENT**

Hearing Date: August 22, 2025  
Time: 9:00 A.M.

Complaint Filed: August 11, 2023  
Trial: Not Set

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Attorneys for Plaintiff ANNA CARDOSO, individually,  
And on behalf of herself and all others similarly situated

1 I, James R. Hawkins, declare as follows:

2 1. I am an individual over the age of 18. I am a principal to the Law Firm of James  
3 Hawkins, APLC. I am one of the attorneys of record for Plaintiff DEMARCO EVANS  
4 (“Plaintiff(s)” or “Class Representative(s)”) in the above-captioned matter against Defendant  
5 CHIPOTLE SERVICES LLC, DBA CHIPOTLE MEXICAN GRILL, INC. (“Defendant(s)”) (with  
6 Plaintiffs, the “Parties”). I have personal knowledge of the facts set forth below, and if called to  
7 testify regarding them, I could and would do so competently.

8 2. I submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval  
9 of the Class and Representative Action Settlement (the “Preliminary Approval Motion”), which is  
10 filed concurrently herewith.

11 3. I have no knowledge of the existence of any conflicting interests between my firm  
12 and any of its attorneys, my co-counsel’s firms or any of their attorneys, and Plaintiffs or any other  
13 Class Member.

14 4. As more fully detailed in the accompanying declarations and attachments  
15 concurrently submitted herewith, the Settlement is a fair, adequate, and reasonable compromise of  
16 the claims at issue. I endorse the Settlement as it is in the best interests of Plaintiffs and the Class.

17 5. Preliminary approval is appropriate since the Settlement will provide significant  
18 monetary relief to the Settlement Class and satisfies the policies underlying the Private Attorney  
19 Generals Act, Labor Code section 2698 et seq.

20 **Litigation History**

21 6. Defendant Chipotle Services LLC, DBA Chipotle Mexican Grill, Inc. (“Defendant”  
22 or “Chipotle”) is a national fast-food chain offering Mexican fare. Plaintiff Demarco Evans  
23 (“Plaintiff Evans”) was employed by Defendant as a non-exempt, hourly employee performing  
24 cook and cashier functions in October 2021 and worked at Defendant’s Fairfield, California  
25 location.

26 7. Plaintiff alleges that throughout Plaintiff’s employment, Defendant has failed to pay  
27 Plaintiff and other employees all minimum wages and overtime owed, failed to provide lawful  
28

1 meal and rest periods, failed to timely pay wages during employment, failed to timely pay wages  
2 owed upon separation from employment, failed to reimburse necessary expenses, failed to pay  
3 reporting time wages, failed to comply with itemized wage statement provisions, and violated the  
4 unfair competition law.

5 8. On February 4, 2022, Plaintiff Evans and Hope Lopez submitted their PAGA notice  
6 to the California Labor and Workforce Development Agency (“LWDA”) and alleged violations by  
7 Defendant of the California Labor Code and the applicable IWC Wage Order(s). Attached as  
8 **Exhibit B** is a true and correct copy of the notice letter sent to the LWDA regarding their claims.

9 9. Plaintiff, along with Hope Lopez and Tasha Banning, filed a Class Complaint in  
10 Orange County Superior Court on February 3, 2022, *Demarco Evans, et al. v. Chipotle Services,*  
11 *LLC* (the “Evans Class action”), Case No. 30-2022-01243855-CU-OE-CXC alleging ten causes of  
12 action on behalf of himself and all other similarly situated employees for (1) failure to pay  
13 minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure  
14 to permit rest breaks; (5) failure to timely pay wages during employment; (6) failure to timely pay  
15 wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8)  
16 failure to pay reporting time wages; (9) knowing and intentional failure to comply with itemized  
17 wage statement provisions; and (10) violation of the unfair competition law. Both Ms. Lopez and  
18 Ms. Banning later dismissed their class claims.

19 10. Plaintiff and Hope Lopez filed a Complaint for civil penalties under the Private  
20 Attorneys’ General Act, Labor Code Section 2698 et seq. in Orange County Superior Court on  
21 April 12, 2022 (the “Evans PAGA action”), Case No. 30-2022-01254511-CU-OE-CXC alleging  
22 one cause of action for civil penalties under the Private Attorneys’ General Act, Labor Code  
23 Section 2698 et seq. The PAGA complaint sought penalties for (1) failure to pay minimum wages;  
24 (2) failure to pay overtime owed; (3) failure to pay all wages owed during employment; (4) failure  
25 to reimburse necessary expenses; (5) failure to pay reporting time pay; (6) knowing and intentional  
26 failure to comply with itemized wage statement provisions; (7) failure to provide suitable seats;

1 and (8) failure to keep accurate records. Ms. Lopez dismissed her PAGA claim shortly thereafter.  
2 Plaintiff Evans continued to pursue the action as the only named Plaintiff.

3 11. Per Plaintiff's arbitration agreement with Defendant, Plaintiff dismissed his class  
4 claims without prejudice on April 12, 2022 and submitted his individual claims and PAGA claims  
5 to arbitration before JAMS on June 2, 2023.

6 12. Plaintiff agreed to attend mediation on April 17, 2024 along with two other  
7 Plaintiffs who had brought separate wage and hour and representative actions against Defendant.  
8 Plaintiff Anna Cardoso ("plaintiff Cardoso") brought the action *Anna Cardoso v. Chipotle*  
9 *Services, LLC*, Case No. 23STCV11524 in Los Angeles Superior Court (the "Cardoso action").  
10 Plaintiff Paloma Scalise ("plaintiff Scalise") brought the action *Paloma Scalise v. Chipotle*  
11 *Services, LLC*, Case No. 23CV006629 in Sacramento Superior Court (the "Scalise action")  
12 (collectively "the Actions").

13 13. On April 17, 2024, the Parties mediated before the experienced employment mediator,  
14 Jeffrey Ross.

15 14. The negotiations were informed by extensive research, investigation and informal  
16 discovery. Prior to bringing each of the actions and through litigation, we investigated the factual  
17 and legal basis of the action, interviewed Plaintiff, reviewed and analyzed documents provided by  
18 Plaintiff, including time and payroll documents and policy documents, investigated Defendant's  
19 organization and structure from publicly available information, interviewed witnesses, researched  
20 the viability of the claims, reviewed disclosures and compiled data for disclosures, reviewed prior  
21 litigation involving Defendant. In advance of mediation, the parties engaged in informal discovery,  
22 whereby Defendant provided timekeeping payroll data related to putative class members and aggrieved  
23 employees for the Class Period, and policy documents of Defendant related to the claims asserted by  
24 Plaintiffs in this action, including Defendant's meal and rest break policies, overtime policies, and  
25 policies related to the amount of control Defendant had over class members. Counsel for Plaintiffs  
26 also performed an extensive analysis of the wage and hour claims presented (both the class and  
27  
28

1 PAGA claims), including a detailed exposure analysis brought to the mediation, upon which  
2 settlement negotiations were based.

3 15. At the mediation, the Parties engaged in settlement negotiations, including the  
4 exchange of legal analyses and data pertaining to Plaintiffs' class and PAGA claims. The  
5 negotiations were rigorous and conducted at arm's length. The settlement cannot be described as  
6 fraudulent or collusive. Rather, the settlement is the product of informed and rigorous negotiations  
7 by experienced counsel and was only reached through the assistance of a mediator's proposal.  
8 Based upon all known facts and circumstances, I believe the settlement is fair, adequate, and  
9 reasonable.

10 16. Based upon the mediator's proposal, the Parties agreed to settle the case on behalf  
11 of all current and former non-exempt employees of Defendant who are or were minors and were  
12 employed by Defendant in the State of California at any time from August 10, 2019 through July  
13 19, 2024, and agreed to settle the PAGA claims for all non-exempt, hourly employees during the  
14 relevant time period.

15 17. Defendant denies any wrongdoing and believes that it has meritorious defenses to  
16 the issues alleged, but has concluded that the further defense of this action would be lengthy and  
17 expensive for all parties. Plaintiffs and their counsel have considered the uncertainty and risk  
18 involved in further litigation, including the difficulties and potential delays in seeking class  
19 certification and Defendant's defenses. Based upon these considerations, Plaintiffs and class  
20 counsel have determined that the settlement is fair, adequate, and reasonable, and is in the best  
21 interests of the class.

22 18. Defendant has agreed to pay an amount of \$6,755,000 (the "Gross Settlement Amount"  
23 or "GSA") to settle the class and PAGA claims, of which \$1,980,870 is reserved to settle the PAGA  
24 claims. The settlement includes the following: (1) Plaintiffs' attorneys' fees up to \$2,251,666.67 (one-  
25 third of the GSA); (2) Plaintiffs' counsels' reasonable litigation costs necessary to prosecute and settle  
26 this litigation and administer the Agreement, estimated at no more than \$100,000; (3) a \$15,000  
27 enhancement award to Plaintiff Scalise, and a \$10,000 enhancement award each to Plaintiff Cardoso  
28

1 and Plaintiff Evans for a total of \$35,000 for Plaintiffs' combined Service Awards; (4) settlement  
2 administration costs not to exceed \$100,000; and (5) a payment of \$1,485,652.50 to the LWDA, which  
3 represents 75% of the PAGA settlement amount. After deduction of these amounts, the remaining net  
4 settlement fund of approximately \$2,782,680.83, which includes \$495,217.50 reserved for the PAGA  
5 aggrieved employees, will be distributed to class members and PAGA aggrieved employees based on  
6 the number of workweeks employed with Defendant. Class members will not be required to return any  
7 claims form.

8 19. The Settlement was only reached after extensive factual and legal investigation and  
9 research, careful evaluation of the respective parties' strengths and weaknesses, and diligent  
10 negotiation efforts. The Settlement amount is a negotiated compromise which took into account  
11 risks related to liability, damages, and all the defenses asserted by Defendant. The risk that class  
12 certification would not be granted was an extremely important consideration, as the denial of class  
13 certification would mean that the class would receive nothing on the class claims. There is also  
14 potential issues of proof and manageability as to the representative claims. The fear of retaliation  
15 and blacklisting makes it unlikely that absent class certification or a representative settlement,  
16 individuals would come forward to assert their rights individually. Although I am of the opinion  
17 that a class can be certified and the PAGA action would be successful, I also believe in the fairness  
18 of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not  
19 prevailing on one or more of the causes of action or theories alleged, the possibility of non-  
20 certification and potential for appeals. Based on the foregoing data and our own independent  
21 investigation and evaluation, as more fully detailed in the declaration of my co-counsel, I am of the  
22 opinion that the settlement with the Defendant for the consideration and on the terms set forth in the  
23 Settlement is fair, reasonable, and adequate and is in the best interest of the class in light of all  
24 known facts and circumstances, including the risk of significant delay, the defenses asserted by  
25 Defendant, and numerous potential appellate issues.

20. I am not aware of any opposition to the Settlement. I am not aware of any other pending cases filed against Defendant alleging the same claims as this present matter regarding the same group of class members.

21. For the foregoing reasons and as more fully detailed in the declarations of my co-counsel, it is respectfully requested that the Court grant preliminary approval of the Settlement as being fair, reasonable, and adequate, as well as approve the requested attorneys' fees and costs, and service awards to the representatives.

### Adequacy of Class Counsel

22. I am an attorney at law licensed to practice before the Courts of the State of California and before this Court.

23. In 1993, I graduated from the University of California, Los Angeles with a Bachelor of Arts Degree. Following graduation, I attended Whittier Law School. In 1996, while a full-time law student, I was also a full-time Judicial Extern for the Honorable Consuelo B. Marshall, United States District Court, Central District. After approximately five months of service for Judge Marshall, I became a full-time extern for the United States Attorney's Office, Central District of California. My externship lasted for approximately five months. Thereafter, in 1997, I graduated from Whittier Law School. The same year, I was admitted to practice law in the State of California.

24. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law firm based out of Irvine, California. At Hawkins & Sofonio, I pioneered the employment department litigating plaintiff related employment issues such as: Wrongful Termination, Age Discrimination, Disability, Wage and Hour and Sexual Harassment claims. Through the success and experience I obtained litigating employment related matters, I commenced the Wage and Hour division of our employment department in 2002. Since then, I have spent the vast majority of my practice litigating wage and hour class actions.

25. In 2007, I incorporated my wage and hour class action practice as James Hawkins APLC. Since its inception, this law firm has been exclusively involved in class action and complex

litigation. In 2009, I opened an additional office in Miami, Florida, prosecuting wage and hour class actions. I have been lead or co-lead counsel in all of the cases listed below.

26. I have a great deal of experience in wage and hour class action litigation. I have been certified and approved as class counsel in many other wage/hour class actions, and I am currently litigating numerous others before this Court and others. Although not an all-inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those associated with this Action:

- ***Mojica v. Compass Group, Inc., et al.*** USDC Central District, Case No. 8:13-cv-01754.
- ***Dao v. 3M Company, et al.*** USDC, CENTRAL DISTRICT, Case No. CV-08-04554.
- ***Ortiz v. Kmart***, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
- ***Morgan v. Aramark Campus, LLC***, USDC, CENTRAL DISTRICT, Case No. SACV08-00412.
- ***West v Iron Mountain Information Management, Inc, et al.***; Los Angeles County Superior Court, Case No. BC393709.
- ***Gonzalez v. Superior Industries International, Inc., et al.***, Los Angeles County Superior Court, Case No. BC 357912.
- ***Acosta v. Fleetwood Travel Trailers of California, Inc., et al.***, Riverside County Superior Court, Case No. RIC 440630.
- ***Walker v. Sharkeez, et al.***, Orange County Superior Court, Case No. 05CC00293.
- ***Padron v. Universal Protection Service, et al***, Orange County Superior Court, Case No. 05CC00013.
- ***Martinez v. Securitas Security Services USA, et al.***, Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460.
- ***Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.***, Riverside Superior Court, Case No. RIC 420909.

- ***Ruiz, et al. v. Unisourse Worldwide, Inc., et al.***, USDC, CENTRAL DISTRICT, Case No. CV09-05848.
- ***Herrador v. Culligan International Company, et al.***, USDC, CENTRAL DISTRICT, Case No. SACV 08-680.
- ***Defries v. Domain Restaurants, et al.***, Orange County Superior Court, Case No. 05CC00128.
- ***Denton v. BLB Enterprises, Inc., et al.***, Orange County Superior Court, Case No. 07CC01292.
- ***Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.***, Los Angeles Superior Court, Case No. BC411477.
- ***McMurray v. Dave and Busters, Inc., et al.***, Orange County Superior Court, Case No. 06CC00099.
- ***Osuna v. DFG Restaurants, Inc., et al.***, Los Angeles Superior Court, Case No. BC 330145.
- ***Burns v. Gymboree Operations, Inc., et al.***, San Francisco Superior Court, Case No. CGC-07-461612.
- ***Willems v. Diedrich Coffee, Inc., et al.***, Orange County Superior Court, Case No. 07CC00015.
- ***Davila, et al. v. Beckman Coulter, Inc., et al.***, Orange County Superior Court, Case No. 07CC01347.
- ***Perez v. Naked Juice Company of Glendora, Inc.***, Los Angeles Superior Court, Case No. BC387088.
- ***Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour Cases***, Los Angeles Superior Court, Case No. JCCP 4545.
- ***Placencia v. Amcor Packaging Distribution, Inc.***, Orange County Superior Court, Case No. 30-2013-00694012-CU-OE-CXC.
- ***Trani v. Lisi Aerospace, et al.***, Los Angeles Superior Court, Case No. BC495527.

- ***Galvan v. Goodwin Co.***, Orange County Superior Court, Case No. 30-2013-00637062-CU-OE-CXC.
- ***Reyes v. Bristol Fiberlite***, Orange County Superior Court, Case No. 30-2013-00653425-CU-OE-CXC.
- ***Gutierrez v. HMT Tank, USDC Central Dist.***, Case No. CV14-1967-CAS(MAN)
- ***Williams v. Il Fornaio America Corp.***, Sacramento County, Case No. 34-2011-0009616.
- ***Aguilar v. 7-Eleven, Inc.***, Orange County, Case No. 30-2009-002687141-CU-OE-CXC.
- ***Madrigal v. Huntington Beach Market Broiler, Inc.***, Orange County, Case No. 30-2012-00611260.
- ***Vang v. Jazz Semiconductor, Inc.***, Orange County, Case no. 30-2011-00460278.
- ***Vigueras v. Red Robin International, Inc.***, USDC Central Dist. Case No. *SACV 17-1422 JVS (DFMx)*;
- ***Smith v. Space Exploration Technologies Corp.***, Los Angeles Superior Court, Case No. *BC55429*;
- ***Cano v. Financial Statement Services, Inc.***, Orange County Superior Court, Case No. 30-2013-00653349-CU-OE-CXC;
- ***Mendez v. Liberty Glass Fabricators, Inc.***, Riverside County Superior Court Case No. RIC1800119;
- ***Attia v. Neiman Marcus Group, Inc.***, United States District Court for the Central District of California Case No. 8:16-cv-001504-DOC-FFM;
- ***O'Brien, et al. v. Cerida Investment Corp.***, Santa Clara Superior Court Case No. 21CV384527;
- ***Gonzalez v. Quality Aluminum Forge, LLC***, Orange County Superior Court Case No. 30-2015-00817941;
- ***Shay v. Apple, Inc.***, United States District Court for the Southern District of

1 California Case No. 3:20-cv-1629-JO-BLM;

- 2 ○ **Milligan v. CWI, Inc.**, San Bernardino Superior Court Case No. CIVDS 2013999;
- 3 ○ **Aguilar v. LDI Mechanical, Inc.**, Riverside County Case No. RIC1610019;
- 4 ○ **Abron v. University Healthcare Alliance**, Alameda County Superior Court Case No.
- 5 RG20066438;
- 6 ○ **Benson v. F21 Opco, LLC**, San Diego Superior Court Case No. 37-2021,00024619-
- 7 CU-OE-CTL;
- 8 ○ **Allen v. Creative Stone Mfg., Inc.**, San Bernardino County Superior Court Case No.
- 9 CIVSB2201498;
- 10 ○ **Santamaria v. Bright Horizons Children's Center**, San Bernardino County Superior
- 11 Court Case No. CIVSB2210140;
- 12 ○ **Yniguez v. Airgas USA, LLC**, Los Angeles County Superior Court Case No.
- 13 20STCV18190;
- 14 ○ **Cervantez v. Genuine Parts Company**, Los Angeles County Superior Court Case
- 15 No. 22STCV00981;
- 16 ○ **Robles v. Jetro Holdings, LLC**, San Diego Superior Court Case No. 37-2021-
- 17 00015414-CU-OE-CTL;
- 18 ○ **Hernandez v. Euromarket Designs, Inc.**, Santa Clara County Superior Court Case
- 19 No. 20CV3770922;
- 20 ○ **Ayala v. Veg-Land, et al.**, Orange County Superior Court Case No. 30-2014-
- 21 00738775-CU-OE-CXC;
- 22 ○ **Puente v. Sully-Miller Contracting Co.**, Orange County Superior Court Case No.
- 23 30-2015-00792088-CU-OE-CXC;
- 24 ○ **Garcia v. Revolution Foods, Inc.**, Los Angeles Superior Court Case No. BC579142;
- 25 ○ **Attaway, et al. v. Alliance Residential, LLC**, Santa Clara County Superior Court
- 26 Case No. 20CV365134;
- 27
- 28

- ***Bowman v. Delta Dental of California***, Alameda County Superior Court Case No. RG21108230;
- ***Hernandez v. Burrtec Waste & Recycling Services, LLC***, United States District Court for the Central District of California Case No. 5:21-CV-001490-JWH-SP;
- ***Grant v. T-Mobile USA, Inc.***, United States District Court for the Central District of California Case No. 2:21-CV-02268;
- ***Dawson v. Wonderful Pistachios and Almonds, LLC***, Kern County Superior Court Case No. BCV-17-100848;
- ***Hamilton, et al. v. Michael Kors Stores (California), Inc.***, Los Angeles County Superior Court Case NO. 19STCV37061;
- ***Ross v. Stater Bros.***, San Bernardino Superior Court Case No. CIVDS1902518;
- ***Walker v. Barrett Business Services, Inc., et al.***, Los Angeles County Superior Court Case No. 20STCV39172;
- ***Benitez, et al. v. Medtronic, Inc., et al.***, Orange County Superior Court Case No. 30-2019-01069185-CU-OE-CXC;
- ***Montgomery v. Copart, Inc.***, Sacramento County Superior Court Case No. 34-2020-00280733-CU-OE-GDS;
- ***Vizcarra-McNamee v. Nordstrom, Inc.***, Orange County Superior Court Case No. 30-2020-01141916-CU-OE-CXC;
- ***Ayers v. Cherry Hill Programs, Inc.***, Fresno County Superior Court Case No. 20CECG00821;
- ***Sleeper v. Boot Barn, Inc.***, Sacramento County Superior Court Case No. 34-2019-00272000-CU-OE-GDS;
- ***Pulido-Dias v. Dirt Cheap, Inc.***, San Bernardino County Superior Court Case No. CIVDS1719694;
- ***Villanueva v. Nordstrom, Inc.***, San Bernardino County Superior Court Case No. CIVDS1918706;

- ***Bryson v. Madame Tussauds, et al.***, Los Angeles County Superior Court Case No. 19STCV33514
- ***Hightower v. Levy Premium, et al.***, Santa Clara County Superior Court Case No. 19CV359262;
- ***Marquez v. Maxim Crane Works, L.P., et al.***, Los Angeles County Superior Court Case No. 19STCV39548;
- ***Rovira v. Silverado Senior Living Management, Inc.***, Orange County Superior Court Case No. 30-2020-01136565-CU-OE-CXC;
- ***Hallum, et al. v. FCA US, LLC***, San Bernardino County Case No. CIVDS1936782;
- ***Martinez v. Placer Title Co., et al.***, Kern County Case No. BCV-19-103486;
- ***Torres v. Van Law Food Products, Inc.***, Orange County Case No. 37-2017-00946312-CU-OE-CXC;
- ***Holmes v. Pet Food Express, LLC***, Alameda County Case No. 22CV014140;
- ***Ventura v. Conduent Commercial Solutions, LLC***, Kern County Case No. BCV-22-102043;
- ***Ramirez v. CSI Electrical Contractors, Inc.***, Fresno County Superior Court Case No. 18CECG04150;
- ***Magana v. Eibach Springs, Inc.***, Riverside County Superior Court Case No. RIC1708917;
- ***Knox v. Express Messenger Systems, Inc.***, San Bernardino County Superior Court Case No. CIVDS1932323;
- ***Corona, et al. v. G&M Oil Company, Inc.***, Los Angeles County Superior Court Case No. BC640876
- ***Aguilar v. Peach Home Services, Inc., et al.***, Riverside County Superior Court Case No. RIC1823057;
- ***Wilson v. M.C. LLC***, Orange County Superior Court Case No. 30-2019-01103382-CU-OE-CXC.

- ***Nunez v. Nevell Group, Inc.***, Orange County Superior Court Case No. 30-2015-00783269.
- ***Bendorf, et al. v. Sea World LLC, et al.***, San Diego Superior Court Case No. 37-2021-00034922-CU-OE-CTL;
- ***DeMartini, et al. v. Safelite Fulfillment, Inc.***, Marin County Case No. CIV20002076;
- ***Ayala, et al. v. Macy's West Stores, Inc.***, Los Angeles County Case No. 20STCV34182;
- ***Wallen, et al. v. United Rentals (North America), Inc., et al.***, Stanislaus County Case No. CV-22-000399;
- ***Granados v. Hyatt Corporation***, United States District Court for the Southern District of California Case No. 3:23-cv-01001-H-VET;
- ***Vigil v. Hyatt Corporation***, United States District Court for the Northern District of California Case No. 4:22-cv-00693;
- ***Garcia v. U.S. Best Ingredients, Inc.***, Los Angeles Superior Court Case No. 21TRCV00813.

27. In sum, my firm has been lead or co-lead counsel in hundreds of cases since its inception. We have recovered hundreds of millions of dollars for employees in the State of California and millions for the State as well through PAGA.

28. Our firm has served as class counsel in a number of significant wage and hour settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest wage and hour class action settlement in California history at \$130,000,000. During this case, plaintiffs appealed a decertification order. This case involved several appeals. The appellate record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-volume reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion to augment the record, and several additional letters informing the appellate court of new legal

1 authority issued after Dukes. The matter was argued to and submitted by the Court of Appeal on  
2 September 15, 2016, and on November 21, 2016, the decertification order was reversed and the  
3 case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* (“*Lubin*”), 5  
4 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision  
5 to the California Supreme Court. The Supreme Court denied Wackenhut’s petition for review of  
6 *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more  
7 litigation, the parties were able to secure the \$130 million settlement that was approved on  
8 October 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

9 29. Additionally, in early 2020, our firm served as lead counsel in a class action jury  
10 trial in the Central District of California involving the class and PAGA representative claims of  
11 over 23,000 employees which successfully resolved in the midst of trial for \$8,500,000.

12 30. Even more recently, our office filed an appeal in the 9<sup>th</sup> circuit in *Valiente, et. al.*  
13 *vs. Swift Transportation Co. of Arizona*, Case No. 21-55456, challenging the retroactive  
14 application of The Motor Vehicle Safety Act, 49 U.S.C. § 31141 preemption of California meal  
15 and rest periods laws as applied to commercial drivers.

16 31. As demonstrated by our track record, our firm will aggressively litigate when  
17 necessary. We have also settled many high-stakes class and representative actions. Hawkins’  
18 settlements have directly compensated hundreds of thousands of California workers and  
19 consumers. Hawkins’ actions have also forced employers to modify their policies for the benefit  
20 of employees including changing the compensation structure for certain employees and changing  
21 practices to ensure that workers will be able to take timely rest and meal breaks.

22 32. Based on our experience, demonstrated competence, resources to prosecute the  
23 claims at issue and reputation among our colleagues in the both the defense and plaintiffs’ bar, I  
24 respectfully submit our firm’s experience in the field of wage and hour cases provides us the  
25 ability to prosecute claims swiftly and often times without the need for protracted litigation.  
26 Although, as demonstrated in the *Wackenhut* cases, we do not give up fighting for class members  
27 when challenged and necessary.

1 **Attorney's Fees and Costs**

2 33. Here, we respectfully submit that the Parties' agreement to pay Class Counsel fees  
3 of up to 1/3 of the Gross Settlement Amount is reasonable. The fee is warranted and reasonable  
4 because of the substantial work and effort incurred to achieve the Settlement on behalf of the Class,  
5 the litigation risks and complexities of prosecuting these types of cases, the contingency nature of  
6 any fee, Class Counsel's skill and experience in handling cases of this type, and fees commonly  
7 awarded in analogous wage and hour lawsuits and settlements. Class Counsel's fees and costs  
8 request is further warranted by the significant benefits achieved on behalf of the Class Members.

9 34. The percentage method, with or without a lodestar cross-check, may be used in  
10 common fund cases like this one. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503. In  
11 support of their fee request at Final Approval, Class Counsel will provide the Court with lodestar  
12 information to permit the Court to do a lodestar cross-check in connection with Class Counsel's  
13 request for attorney's fees.

14 35. Class Counsel's fees request is reasonable considering: (a) the work involved in  
15 achieving an excellent result for the Class and bringing the action to an efficient resolution, (b) the  
16 associated risks to Class Counsel in taking a matter on a contingency basis, (c) the substantial  
17 benefits conferred on the Class, and (d) the overwhelmingly positive response by Class Members  
18 to the Settlement.

19 36. In my opinion, the requested fee award takes into account the excellent result and  
20 the risks undertaken in bringing this case on a contingency basis, advancing all costs and deferring  
21 payment for the time that Class Counsel has worked on this case, with no guarantee that any of the  
22 fees and costs incurred would ever be recovered.

23 37. To date, my office has invested approximately 400 hours in the litigation of this  
24 matter and the related actions. I submit that the requested attorneys' fees are fair and reasonable, as  
25 are the hourly rates at which our attorneys bill. The fee request at final approval will be supported  
26 by a detailed explanation of the qualifications of each timekeeper, and their corresponding hourly  
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1 rate, along with an explanation of the amount of time performed on the various tasks performed on  
2 behalf of Plaintiff and the Class Members.

3 38. In serving as Class Counsel in this matter, Class Counsel will also seek an award of  
4 actual costs and expenses up to \$100,000. This sum is reimbursement for out-of-pocket costs. Any  
5 sums not awarded will be available for distribution to the Class as part of the Net Settlement  
6 Amount. I will provide the Court with a detailed summary of the total costs at the time of the Final  
7 Approval Motion. I believe that all of these fees and costs are reasonable and necessarily incurred  
8 in litigating this matter and in pursuit of the settlement. To date, the law of James Hawkins APLC  
9 has incurred costs in the amount of approximately \$4664.65. This does not include costs incurred  
10 by our co-counsel and does not include final costs associated with the filing of the approval motions.  
11 Attached hereto as **Exhibit A** is a true and correct itemization of the costs incurred by James  
12 Hawkins APLC as of the date of this filing.

13 **THE REQUESTED SERVICE AWARD IS JUSTIFIED**

14 39. Under the terms of the Settlement Agreement, Plaintiff Evans seeks a \$10,000  
15 Representative Service Payment. The total Representative Payments (to all representatives in the  
16 amount of \$35,000) total, approximately .51% of the Gross Settlement Amount. We respectfully  
17 submit that the representative payments are reasonable and appropriate in light of this excellent  
18 settlement.

19 40. I strongly support the Service Payment to Plaintiff Evans, and Defendant does not  
20 oppose the amount requested. Such an amount was reached as the product of arm's length  
21 negotiations. Plaintiff's assistance to Class Counsel and services to the Class have been invaluable.  
22 (See generally, Declaration of Demarco Evans in Support of Motion for Preliminary Approval of  
23 Class Action Settlement).

24 41. Plaintiff, with the assistance of counsel, initiated three separate actions (the class  
25 case, the PAGA case, and an arbitration) in an effort to secure a remedy for Defendant's Labor Code  
26 violations. Plaintiff searched for and provided extensive supporting documents to counsel. He  
27 engaged in numerous conversations with counsel and our staff to assist counsel in developing  
28

1 information necessary to litigate and settle this case. Plaintiff also conducted extensive record  
2 review and consulted with counsel to assist in evaluating and proving the claims and provided  
3 information and documents that were vital to Class Counsel's prosecution of this matter, and  
4 dedicated invaluable effort required to advance this matter to resolution. He also assisted counsel in  
5 preparing for the mediation and made himself available during mediation to answer any questions  
6 that arose, and has been actively involved in this matter since its inception. He consistently  
7 monitored the action, and has been active throughout. The primary consideration for this payment  
8 is to compensate the Plaintiff for his service and effort to prosecute this class action, and the risk  
9 and potential consequences they assumed by virtue of serving as a representative payment. The  
10 proposed Service Award is a small portion of the Gross Settlement Amount. The payment is fair  
11 and justified as part of the Settlement. Plaintiff is not receiving preferential treatment. Plaintiff  
12 submits a declaration regarding his efforts with this motion.

13 I declare under penalty of perjury under the laws of the State of California and the United  
14 States of America that the foregoing is true and correct.

15  
16 Executed on this 29th day of July, 2025 at Irvine, California.

17 /s/ James R. Hawkins

18 James R. Hawkins, Esq.  
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# **EXHIBIT A**

# Matter Billing Detail

## JAMES HAWKINS APLC

Date Range: 01/01/1900 to 07/25/2025  
Client: CHIPOL - DeMarco Evans  
Matter: CHIPOTLE006 - Chipotle Services LLC-PAGA- DeMarco Evans and Hope Lopez v. Chipotle

| Date       | Expense Code | Description                                                                                       | Debit      | Credit | Billing Status | On Hold | Invoice Number | Check Number | Payee |
|------------|--------------|---------------------------------------------------------------------------------------------------|------------|--------|----------------|---------|----------------|--------------|-------|
|            |              | Balance Forward:                                                                                  | \$0.00     |        |                |         |                |              |       |
| 04/13/2022 | ONE          | One Legal Services-Complaint,Civil Case Cover Sheet,Summons- In#03997088                          | \$1,492.52 |        | Unbilled       |         |                |              |       |
| 04/13/2022 | FST          | First Legal Network - Process Serve - Complaint, Summons, Civil Case Cover Sheet (2) IN# 30195930 | \$407.93   |        | Unbilled       |         |                |              |       |
| 05/17/2022 | ONE          | One Legal Services - Request for Dismissal-in#04078278                                            | \$15.19    |        | Unbilled       |         |                |              |       |
| 08/02/2022 | FST          | First Legal Network- E-Filing: CM Stmt IN#30209403                                                | \$35.75    |        | Unbilled       |         |                |              |       |
| 08/08/2022 | ONE          | One Legal Services - Ntc of OSC and Continuance of CMC- In#04274521                               | \$15.19    |        | Unbilled       |         |                |              |       |
| 06/02/2023 | CRT          | Court Documents - 06.02.23 Pulling Signed Order re Arb from docket                                | \$7.50     |        | Unbilled       |         |                |              |       |
| 06/02/2023 | FF           | Filing Fee - Demand for Arbitration filing- plf DeMarco Evans -JAMS                               | \$409.26   |        | Unbilled       |         |                |              |       |
| 11/01/2023 | POS          | Postage - Crs to Client (Evans) re Contact                                                        | \$8.53     |        | Unbilled       |         |                |              |       |
| 12/19/2023 | ONE          | One Legal Services- Case Management Statement - in#05585944                                       | \$13.33    |        | Unbilled       |         |                |              |       |
| 05/10/2024 | POS          | Postage-04.17.24-Contact                                                                          | \$8.69     |        | Unbilled       |         |                |              |       |
| 01/14/2025 | ONE          | One Legal Services - Joint Statement-In#06714141                                                  | \$19.82    |        | Unbilled       |         |                |              |       |
| 05/28/2025 | ONE          | One Legal Services - Request for Dismissal, Declaration in Support- In#07154720                   | \$19.82    |        | Unbilled       |         |                |              |       |
|            |              | Total:                                                                                            | \$2,453.53 | \$0.00 |                |         |                |              |       |
|            |              | Balance:                                                                                          | \$2,453.53 |        |                |         |                |              |       |

Matter Billing Detail

JAMES HAWKINS APLC

| Date                                | Expense Code | Description | Debit      | Credit | Billing Status | On Hold | Invoice Number | Check Number | Payee |
|-------------------------------------|--------------|-------------|------------|--------|----------------|---------|----------------|--------------|-------|
| Total Fees Billed-----              |              |             | \$0.00     |        |                |         |                |              |       |
| Total Fees Unbilled : -----         |              |             | \$0.00     |        |                |         |                |              |       |
| Total Fees Received : -----         |              |             | \$0.00     |        |                |         |                |              |       |
| Total Soft Cost Billed : -----      |              |             | \$0.00     |        |                |         |                |              |       |
| Total Soft Cost Unbilled : -----    |              |             | \$0.00     |        |                |         |                |              |       |
| Total Soft Cost Received : -----    |              |             | \$0.00     |        |                |         |                |              |       |
| Total Hard Cost Billed : -----      |              |             | \$0.00     |        |                |         |                |              |       |
| Total Hard Cost Unbilled : -----    |              |             | \$2,453.53 |        |                |         |                |              |       |
| Total Hard Cost Received : -----    |              |             | \$0.00     |        |                |         |                |              |       |
| Total Taxes Billed : -----          |              |             | \$0.00     |        |                |         |                |              |       |
| Total Taxes Unbilled : -----        |              |             | \$0.00     |        |                |         |                |              |       |
| Total Taxes Received : -----        |              |             | \$0.00     |        |                |         |                |              |       |
| Total Late Charges Billed : -----   |              |             | \$0.00     |        |                |         |                |              |       |
| Total Late Charges Unbilled: -----  |              |             | \$0.00     |        |                |         |                |              |       |
| Total Late Charges Received : ----- |              |             | \$0.00     |        |                |         |                |              |       |
| Trust Balance: -----                |              |             | \$0.00     |        |                |         |                |              |       |

# Matter Billing Detail

Report Date:7/25/2025

Report Time:9:43AM

Page:1 of 2

User ID:Miccolis

## JAMES HAWKINS APLC

Date Range:01/01/1900 to 07/25/2025

Client:CHIPOTLE002 - Tasha Banning

Matter:CHIPOTL1001 - Chipotle Services LLC- Tasha Banning

| Date       | Expense Code | Description                                                                | Debit      | Credit | Billing Status | On Hold | Invoice Number | Check Number | Payee |
|------------|--------------|----------------------------------------------------------------------------|------------|--------|----------------|---------|----------------|--------------|-------|
|            |              | Balance Forward:                                                           | \$0.00     |        |                |         |                |              |       |
| 02/04/2022 | ONE          | One Legal Services-Complaint,Civil Case Cover Sheet,Summons -In#03835929   | \$1,492.00 |        | Unbilled       |         |                |              |       |
| 02/23/2022 | POS          | Postage - LWDA cert mail (2)                                               | \$18.72    |        | Unbilled       |         |                |              |       |
| 02/23/2022 | FIL          | Filing Fee - LWDA filing                                                   | \$75.00    |        | Unbilled       |         |                |              |       |
| 05/13/2022 | FED          | FED EX- 05.13.22 Crs to client re contact                                  | \$34.80    |        | Unbilled       |         |                |              |       |
| 05/31/2022 | ONE          | One Legal Services- Request for Dismissal-in#04110424                      | \$15.19    |        | Unbilled       |         |                |              |       |
| 06/17/2022 | ONE          | One Legal Services- Case Management Statement- In#04154612                 | \$12.87    |        | Unbilled       |         |                |              |       |
| 06/20/2022 | FST          | First Legal Network- E-Filing: CM Stmt IN#30202789                         | \$35.75    |        | Unbilled       |         |                |              |       |
| 06/23/2022 | CRT          | Court Documents - 06.23.22 needed to pull a number of documents off docket | \$30.00    |        | Unbilled       |         |                |              |       |
| 07/13/2022 | ONE          | One Legal Services- Notice and Acknowledgment of receipt- In#04211895      | \$15.19    |        | Unbilled       |         |                |              |       |
| 08/12/2022 | ONE          | One Legal Services - Case management Statement- In#04289987                | \$12.87    |        | Unbilled       |         |                |              |       |
| 02/22/2023 | ONE          | One Legal Services - Case Management Statement- In#04772515                | \$13.33    |        | Unbilled       |         |                |              |       |
| 03/23/2023 | ARB          | Arbitration FEE- IN#6587352 CK#10714                                       | \$400.00   |        | Unbilled       |         |                |              |       |
| 12/03/2023 | ONE          | One Legal Services- Request for Dismissal with Prejudice - In#05542448     | \$15.65    |        | Unbilled       |         |                |              |       |
| 12/05/2023 | CRT          | Court Documents- Order dismissing case                                     | \$7.50     |        | Unbilled       |         |                |              |       |
| 05/27/2025 | LDS          | Legal Document Server - EFiling - Request for Dismissal IN# 12063586       | \$32.25    |        | Unbilled       |         |                |              |       |
|            |              | Total:                                                                     | \$2,211.12 | \$0.00 |                |         |                |              |       |
|            |              | Balance:                                                                   | \$2,211.12 |        |                |         |                |              |       |

Matter Billing Detail

JAMES HAWKINS APLC

| Date                                | Expense Code | Description | Debit      | Credit | Billing Status | On Hold | Invoice Number | Check Number | Payee |
|-------------------------------------|--------------|-------------|------------|--------|----------------|---------|----------------|--------------|-------|
| Total Fees Billed-----              |              |             | \$0.00     |        |                |         |                |              |       |
| Total Fees Unbilled : -----         |              |             | \$0.00     |        |                |         |                |              |       |
| Total Fees Received : -----         |              |             | \$0.00     |        |                |         |                |              |       |
| Total Soft Cost Billed : -----      |              |             | \$0.00     |        |                |         |                |              |       |
| Total Soft Cost Unbilled : -----    |              |             | \$0.00     |        |                |         |                |              |       |
| Total Soft Cost Received : -----    |              |             | \$0.00     |        |                |         |                |              |       |
| Total Hard Cost Billed : -----      |              |             | \$0.00     |        |                |         |                |              |       |
| Total Hard Cost Unbilled : -----    |              |             | \$2,211.12 |        |                |         |                |              |       |
| Total Hard Cost Received : -----    |              |             | \$0.00     |        |                |         |                |              |       |
| Total Taxes Billed : -----          |              |             | \$0.00     |        |                |         |                |              |       |
| Total Taxes Unbilled : -----        |              |             | \$0.00     |        |                |         |                |              |       |
| Total Taxes Received : -----        |              |             | \$0.00     |        |                |         |                |              |       |
| Total Late Charges Billed : -----   |              |             | \$0.00     |        |                |         |                |              |       |
| Total Late Charges Unbilled: -----  |              |             | \$0.00     |        |                |         |                |              |       |
| Total Late Charges Received : ----- |              |             | \$0.00     |        |                |         |                |              |       |
| Trust Balance: -----                |              |             | \$0.00     |        |                |         |                |              |       |

# **EXHIBIT B**

**JAMES *JH* HAWKINS**  
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618  
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

February 1, 2022

**Via LWDA Website:**

California Labor and Workforce Development Agency Attn: PAGA Administrator  
1515 Clay Street, Ste 801  
Oakland, CA 94612  
<https://www.dir.ca.gov/Private-Attorneys-General-Act>

**Via Certified Mail:**

Chipotle Services, LLC  
610 Newport Center Dr.  
Newport Beach, CA 92660  
Certified Mail Receipt:  
7021 0950 0000 7376 5255

**Via Certified Mail:**

Agent for Service of Process for  
Chipotle Services, LLC  
CSC Lawyers Incorporating Service  
2710 Gateway Oaks Dr, Suite 150N  
Sacramento, CA 95833  
Certified Mail Receipt:  
7021 0950 0000 7376 5262

RE: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiffs Demarco Evans and Hope Lopez, individually and on behalf of all others similarly situated, give NOTICE of their intent to commence a civil action pursuant to California Labor Code Section 2698, *et seq.* Plaintiffs hereby give written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendants Chipotle Services, LLC, a Colorado limited liability company (“Defendants” or “Chipotle”) via their agent for service of process.

Plaintiffs were employed by Defendants as hourly, non-exempt employees. Plaintiff Evans began his employment with Defendants on or about October 8, 2021, and continued such employment to November 1, 2021. He worked at Defendants’ facility in the City of Fairfield, California. Plaintiff was employed by Defendants in the position of grill/cook. Plaintiff Lopez began her employment with Defendants in August of 2019, and continued such employment through September 2021. She worked at Defendants’ facility in the City of Anaheim, California.

The group of aggrieved employees that Plaintiffs seek to represent is a group of non-exempt employees working in Defendants’ restaurant locations in the State of California during the relevant time period (“Aggrieved Employees”) as tolled by Emergency Rule 9. This notice is timely as it is provided within one year of the violations. In addition, the statute of limitation for the claim under the Private Attorney Generals Act of 2004 (and the relevant time period), is tolled

January 28, 2022

by operation of law under Emergency Rule 9 due to COVID-19 pandemic.

Plaintiffs have attached their Complaint, and incorporate the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiffs allege have been violated, including the facts and relevant theories alleged against Defendants in the Complaint.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5<sup>th</sup> 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiffs have standing to pursue penalties on behalf of the state for violations affecting all the Aggrieved Employees working for Defendants at their locations in the State regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiffs claim that Defendants implemented legally non-compliant policies and practices which led to Defendants' (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit legally compliant rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7) failure to reimburse necessary expenses; (8) failure to pay reporting time wages; (9) knowing and intentional failure to comply with itemized wage statement provisions; and (10) violation of the Unfair Competition Law.

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define "hours worked" 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." At all times relevant, Plaintiffs and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiffs and Aggrieved Employees to work off the clock. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law. Indeed, Plaintiffs and Aggrieved Employees, as a matter of Defendants' policy, were required to work 1-2+ hours after midnight to complete duties despite Defendants' time clock program automatically clocking out Plaintiffs and the Aggrieved Employees at exactly midnight, and thus constitutes as hours worked which Plaintiffs and Aggrieved Employees were not compensated for in violation of the above named Labor Code sections.

January 28, 2022

During the relevant periods, Defendants required Plaintiffs and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek. Both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent wage order 4-2001, and 5-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times that employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to 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 (8) hours on any seventh (7<sup>th</sup>) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

Defendants failed to incorporate all forms of compensation, including without limitation non-discretionary bonuses, differentials, Covid pay, and incentives, into the regular rate for overtime purposes. Thus, employees were undercompensated in violation of the law.

In addition, as set forth above, Plaintiffs and the Aggrieved Employees were required to work a significant number of hours off the clock. Many of these hours were overtime hours and should have been paid at the overtime rate. Defendants knew or should have known Plaintiffs and the Aggrieved Employees were undercompensated as a result of these practices.

Plaintiffs allege they and the Aggrieved Employees were regularly required to work shifts in excess of five hours without being provided a lawful first meal period. Plaintiffs claim that Defendants violated Labor Code section 512 and 226.7, and IWC Wage Order 5-2001 for failing to provide timely, uninterrupted meal periods. Pursuant to Labor Code section 512 and the Wage Order, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties. Here, Defendants failed to provide Plaintiffs and all other Aggrieved Employees meal periods of not less than thirty (30) minutes. Due to work demands, lack of coverage, Defendants' policies, practices and scheduling requirements, Plaintiffs and the Aggrieved Employees were often interrupted or not provided legally compliant first and second meal periods in violation of the law. Moreover, as a matter of Defendants' policy and practice, second meal periods were not provided to Plaintiffs and the Aggrieved Employees on shifts over 10 hours without a lawful waiver.

Plaintiffs allege that Defendants failed to authorize and permit rest periods. This failure violates Labor Code §226.7 and Section 12(A) of Wage Order 5, which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage Order 5, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of pay for each workday that a rest period was not authorized and permitted. Plaintiffs and the Aggrieved Employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order 5. Employees were not authorized and permitted to take a net ten minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, staffing and coverage policies and practices, and

January 28, 2022

imposed work demands that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent, any rest periods were taken they were not compliant because employees were essentially required to remain on duty.

The law is clear that rest periods must be “duty free” and to provide a compliant rest period, employers must “relieve their employees of all duties” during their breaks and must “relinquish any control over how employees spend their break time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 261 (2016).

Defendants further violated the law by failing to compensate Plaintiffs and the Aggrieved Employees with one additional hour of pay at their regular rate of pay when lawful meal or rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

In relevant part, Labor code section 226(a) requires: An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendants failed to provide accurate, lawful itemized wage statements to Plaintiffs and the Aggrieved Employees in part because of the violations set forth in Plaintiffs’ attached complaint, including the failure to pay one hour of premium pay at the employee’s regular rate of pay for non-provided meal and rest breaks, and the Defendants’ failure to accurately record the additional compensation given to Plaintiffs and Aggrieved Employees. In addition, Defendants double counted certain hours such that total hours worked were incorrectly indicated on the wage statements.

In addition, Plaintiffs allege that Defendants failed to provide suitable seats to Aggrieved Employees. Section 14A of Wage Order 5-2001 provides: “All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” Defendants failed to provide seating to Aggrieved Employees throughout the state of California, despite the fact that the nature of the work reasonably permits the use of seats. Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. Section 14(B) of the Wage Order provides: “When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.” Defendants failed to provide suitable seating as required by law. By failing to provide Plaintiffs and the other current or former Aggrieved Employees with suitable seats in violation of Wage Order 5-2001, Defendants also violated labor code section 1198.

Plaintiffs also contends that Defendants failed to keep accurate records as required by Wage Order 5-2001, Labor Code 1174, and 1198. IWC Wage Order 5-2001 requires in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rate of pay....” Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the complaint, including without limitation failing to keep records of meal periods and all wages earned at the proper rates. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

Under California Labor Code §2802, an employee is entitled to be reimbursed by his or her employer “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Here, Defendants failed to reimburse Plaintiffs for all expenses incurred in the discharge of their duties, including but not limited to mileage. Because Defendants have violated California Labor Code § 2802, Defendants are liable for civil penalties.

In part, as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All Aggrieved Employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, sick pay, minimum wage, overtime compensation and compensation for non-provided meal periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203. Plaintiffs further allege that, regardless of any underlying failure to pay wages or premiums, they and the Aggrieved Employees were not paid all earned wages on the date of termination or within the required time frame as a matter of Defendants’ pattern and practice.

Labor Code section 1197 makes it unlawful to pay an employee less than the minimum wage as established by the Industrial Welfare Commission. Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001. In relevant part, Section 5 of the applicable wage order provides: (A) each 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.” Defendants failed to pay reporting time wages. In particular, Plaintiffs and the Aggrieved Non-Exempt Employees were forced to report to work and were furnished with less

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

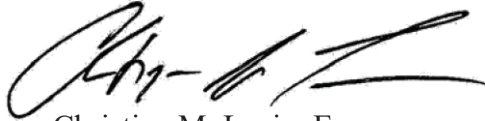
January 28, 2022

than half the employee's usual or scheduled day's work. In fact, on numerous occasions, Plaintiffs and Aggrieved Non-Exempt Employees reported to work at Defendants' direction, and then were sent home—all without any compensation. By the failure to pay hourly wages for reporting time, Defendants willfully violated Labor Code sections 1194, 1197, 1198, and IWC Wage Order 5-2001.

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Christina M. Lucio', with a stylized flourish at the end.

Christina M. Lucio, Esq.

Attached: Class Action Complaint

James R. Hawkins (SBN 192925)  
Christina M. Lucio (SBN 253677)  
**JAMES HAWKINS APLC**  
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Attorneys for Plaintiffs TASHA BANNING, DEMARCO EVANS, and HOPE LOPEZ,  
on behalf of themselves and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE**

TASHA BANNING, DEMARCO  
EVANS, and HOPE LOPEZ, on behalf of  
themselves and all others similarly  
situated,

Plaintiff,

v.

CHIPOTLE SERVICES, LLC, a Colorado  
Limited Liability Company, and DOES 1-  
50, inclusive,

Defendants.

Case No.

**COMPLAINT**

*Assigned for All Purposes To:*

Hon.

Dept.:

**COMPLAINT FOR DAMAGES FOR:**

- 1) **Failure to Pay Minimum Wages;**
- 2) **Failure to Pay Overtime Owed;**
- 3) **Failure to Provide Lawful Meal Periods;**
- 4) **Failure To Authorize And Permit Rest Periods;**
- 5) **Failure to Timely Pay Wages During Employment;**
- 6) **Failure to Timely Pay Wages Owed Upon Separation From Employment;**
- 7) **Failure to Reimburse Necessary Expenses;**
- 8) **Failure to Pay Reporting Time Wages;**
- 9) **Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions;**
- 10) **Violation of the Unfair Competition Law;**

**DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiffs TASHA BANNING, DEMARCO EVANS, and HOPE LOPEZ (“Plaintiffs”), individually on behalf of themselves and on behalf of others similarly situated, and asserts claims against defendants CHIPOTLE SERVICES LLC, a Colorado Limited Liability Company; and DOES 1-50, inclusive (collectively “Defendants” or “Chipotle”) as follows:

### **INTRODUCTION**

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiffs and any and all persons who are or were employed by Defendants at restaurants in the State of California at any time from four years prior to the filing of this Complaint (as tolled by Emergency Rule 9) through resolution or trial of the matter. (“Class Members” or “Non-Exempt Employees”).

2. Defendants implemented uniform policies and practices that deprived Plaintiffs and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; reporting time wages; lawful meal and/or rest breaks; reimbursement for necessary expenses; and timely payment of wages.

3. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiffs, on behalf of themselves and all Class Members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 245-249, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal and rest period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys’ fees and costs.

4. Plaintiffs, on behalf of themselves and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

1 **JURISDICTION AND VENUE**

2 5. This action is brought as a Class Action on behalf of Plaintiffs and similarly situated  
3 employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary  
4 damages and restitution sought by Plaintiffs exceeds the minimum jurisdiction limits of the  
5 California Superior Court and will be established according to proof at trial.

6 6. This Court has jurisdiction over this action pursuant to the California Constitution  
7 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except  
8 those given by statute to other courts. The statutes under which this action is brought do not give  
9 jurisdiction to any other court.

10 7. This Court has jurisdiction over this Action pursuant to California Code of Civil  
11 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

12 8. This Court has jurisdiction over Defendants because, upon information and belief,  
13 each Defendant is either a resident of California, has sufficient minimum contacts in California, or  
14 otherwise intentionally avails itself of the California market so as to render the exercise of  
15 jurisdiction over them by the California Courts consistent with traditional notions of fair play and  
16 substantial justice. Defendants have done and are doing business throughout California and Orange  
17 County.

18 9. The unlawful acts alleged herein have a direct effect on Plaintiffs and the other  
19 similarly situated Non-Exempt Employees within Orange County and it is believed that Defendants  
20 have employed hundreds of Class Members as Non-Exempt Employees in Orange County.

21 10. The California Superior Court also has jurisdiction in this matter because the  
22 individual claims of the Class Members described herein are presently believed to be under the  
23 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the  
24 aggregate potential damages and recovery by all of the claims of the Plaintiffs' Class, including  
25 attorneys' fees, placed in controversy by Plaintiffs' class-wide claims, is presently believed to be  
26 under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005.  
27 Further, there is no federal question at issue, as the issues herein are based solely on California  
28 statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil

1 Procedure, the California Civil Code, and the California Business and Professions Code.

2 11. Venue is proper in this Court because one or more of the Defendants reside, transact  
3 business, or have offices in this County, and the acts or omissions alleged herein took place in this  
4 County.

5 **PARTIES**

6 12. Defendant Chipotle Services LLC is a Colorado Limited Liability Company doing  
7 business in the State of California. It is based at 610 Newport Center Drive, Suite 1300, Newport  
8 Beach, CA 92660.

9 13. Upon information and belief, Chipotle employs Non-Exempt Employees, like  
10 Plaintiffs, throughout the State of California.

11 14. Plaintiff Tasha Banning is, and during the liability period has been, a resident of  
12 California.

13 15. Plaintiff Banning was employed in an hourly, non-exempt position by Defendants  
14 during the relevant time period.

15 16. Plaintiff Demarco Evans is, and during the liability period has been, a resident of  
16 California.

17 17. Plaintiff Evans was employed in an hourly, non-exempt position by Defendants  
18 during the relevant time period.

19 18. Plaintiff Hope Lopez is, and during the liability period has been, a resident of  
20 California.

21 19. Plaintiff Lopez was employed in an hourly, non-exempt position by Defendants  
22 during the relevant time period.

23 20. Plaintiffs and the members of the putative class were employed as hourly paid  
24 employees and employed by Defendants at restaurants in the State of California at any time from  
25 four years prior to the filing of this Complaint (as tolled by Emergency Rule 9).

26 21. Whenever in this complaint reference is made to any act, deed, or conduct of  
27 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through  
28 one or more of Defendants' officers, directors, agents, employees, or representatives, who was

1 actively engaged in the management, direction, control, or transaction of the ordinary business and  
2 affairs of Defendants.

3 22. The true names and capacities of Defendants, whether individual, corporate,  
4 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to  
5 Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §  
6 474. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and  
7 capacities of the Defendants designated hereinafter as DOES when such identities become known.

8 23. Plaintiffs are informed and believe, and thereon allege, that the Doe Defendants are  
9 the partners, agents, or principals and co-conspirators of Defendants and of each other; that  
10 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided  
11 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits  
12 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the  
13 liability of the Defendants as alleged herein.

14 24. Plaintiffs are further informed and believe, and thereon allege, that at all times  
15 material herein, each Defendant was completely dominated and controlled by its co-Defendants  
16 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint  
17 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed  
18 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.  
19 Whenever and wherever reference is made to individuals who are not named as Defendants in this  
20 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times  
21 acted on behalf of Defendants named in this complaint within the scope of their respective  
22 employments.

### 23 **FACTUAL ALLEGATIONS**

24 25. During the relevant time frame, Defendants compensated Plaintiffs and the Non-  
25 Exempt Employees based upon an hourly wage.

26 26. Plaintiffs and the Class Members were, and at all times pertinent hereto, have been  
27 non-exempt employees within the meaning of the California Labor Code, and the implementing  
28 rules and regulations of the IWC California Wage Orders. They are subject to the protections of

1 the IWC Wage Orders and the Labor Code.

2 27. Plaintiffs are informed and believe, and thereon allege, that Defendants are and were  
3 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the  
4 requirements of California's wage and employment laws.

5 28. During the relevant time, Plaintiff Banning was employed by Defendants in an  
6 hourly, non-exempt position. She worked as a chef or cook in Defendants' restaurants  
7 approximately 5-6 days per week, 40+ hours per week.

8 29. During the relevant time, Plaintiff Evans was employed by Defendants in an hourly,  
9 non-exempt position. He worked as a grill/cook in Defendants' restaurants approximately 5 days  
10 per week, approximately 19 hours per week.

11 30. During the relevant time, Plaintiff Lopez was employed by Defendants in an hourly,  
12 non-exempt position. She typically worked as a cashier in Defendants' restaurants.

13 31. All Class Members are similarly situated in that they are all subject to Defendants'  
14 uniform policies and systemic practices as specified herein.

15 32. Plaintiffs and the Class Members were required to clock in at the beginning of  
16 their shifts, clock out for lunch, in at the end of their lunch periods and out at the end of their  
17 shifts. Plaintiffs and the Class Members were not paid for all hours worked because employees  
18 were required to work off the clock.

19 33. By way of example, Plaintiffs and the Class Members were required to follow  
20 Defendants' Covid procedures and check their temperature and answer Covid questions prior to  
21 clocking in. All such time constitutes hours worked off the clock.

22 34. Further, Plaintiffs and the Class Members would often have to work an hour or  
23 more after midnight to complete job duties despite the Defendants' time clock automatically  
24 clocking Plaintiffs and the Class Members out at midnight.

25 35. Plaintiffs and the Class Members were also not properly paid at the regular rate for  
26 all hours worked.

27 36. In addition, Plaintiffs and the Class Members worked in excess of eight (8) hours  
28 in day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a

1 rate of time and one-half the employee's regular rate of pay per hour.

2 37. Further, Defendants had a policy of shaving the hours worked by Plaintiffs and the  
3 Class Members. Such shaving of time was unlawful as it was performed to the detriment of the  
4 Class.

5 38. These policies and practices deprived Plaintiffs and Class Members of overtime  
6 wages earned and are therefore unlawful.

7 39. Defendants failed to accurately calculate all hours worked by Plaintiffs and the  
8 Class Members.

9 40. Upon information and belief, Defendants failed to incorporate all forms of non-  
10 discretionary compensation into the regular rate, including differentials and incentives.

11 41. Plaintiffs and the Class Members were regularly required to work shifts in excess  
12 of five hours without being provided a lawful meal period and, on occasion, over ten hours in a  
13 day without being provided a second lawful meal period as required by law.

14 42. Indeed, during the relevant time, as a consequence of Defendants' scheduling  
15 practices, work demands, staffing and lack of coverage, and Defendants' policies and practices,  
16 Defendants frequently failed to provide Plaintiffs and the Class Members timely, legally  
17 complaint uninterrupted 30-minute meal periods as required by law.

18 43. Not only were Plaintiffs and the Class Members' first meal breaks frequently not  
19 provided, untimely or short, but also Plaintiffs and the Class Members were not provided a  
20 second meal period when working shifts in excess of 10 hours and in excess of 12 hours.

21 44. On information and belief, Plaintiffs and Class Members did not waive their rights  
22 to a second meal period.

23 45. Despite the above-mentioned meal period violations, Defendants failed to  
24 compensate Plaintiffs, and on information and belief, failed to compensate Class Members, one  
25 additional hour of pay at their regular rate as required by California law when meal periods were  
26 not timely or lawfully provided in a compliant manner.

27 46. Plaintiffs are informed and believe, and thereon allege, that Defendants know,  
28 should know, knew, and/or should have known that Plaintiffs and the other Class Members were

1 entitled to receive accurate premium wages under Labor Code §226.7 but were not receiving  
2 accurately calculated compensation.

3 47. In addition, during the relevant time frame, Plaintiffs and the Non-Exempt  
4 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest  
5 period for every four hours worked or major fraction thereof, which is a violation of the Labor  
6 Code and IWC wage order.

7 48. Defendants maintained and enforced scheduling practices, policies, and imposed  
8 work demands that frequently required Plaintiffs and Class Members to forego their lawful, paid  
9 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such  
10 requisite rest periods were not timely authorized and permitted.

11 49. Despite the above-mentioned rest period violations, Defendants did not  
12 compensate Plaintiffs, and on information and belief, did not pay Class Members one additional  
13 hour of pay at their regular rate as required by California law, including Labor Code section 226.7  
14 and the applicable IWC wage order, for each day on which lawful rest periods were not  
15 authorized and permitted.

16 50. Moreover, Plaintiffs and the Class Members were required to incur necessary  
17 expenses in the discharge of their duties but were not reimbursed for such costs.

18 51. By way of example, Plaintiffs were required to drive during work hours to other  
19 stores. Defendants did not reimburse Plaintiffs, and on information and belief, did not reimburse  
20 Class Members for milage.

21 52. In addition, Plaintiffs were required to launder and maintain their uniforms and  
22 were not reimbursed for said sums or the time spent performing such duties.

23 53. Defendants also failed to provide accurate, lawful itemized wage statements to  
24 Plaintiffs and the Class Members in part because of the above specified violations. In addition,  
25 the wage statements double counted certain hours and failed to accurately state the total hours  
26 worked.

27 54. Defendants have also made it difficult to determine applicable rates of pay and  
28 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-

1 Exempt Employees, including Plaintiffs, during the liability period because they did not  
2 implement and preserve a lawful record-keeping method to record all hours worked, and non-  
3 provided rest and meal periods owed to employees as required for non-exempt employees by 29  
4 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage  
5 Orders.

6 55. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
7 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours  
8 thereof for resignations without prior notice as the case may be) they had a duty to accurately  
9 compensate Plaintiffs and Class Members for all wages owed including straight time, overtime,  
10 meal and rest period premiums, and that Defendants had the financial ability to pay such  
11 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part  
12 because of the above-specified violations.

13 56. In addition, regardless of any derivative violation, as a matter of Defendants' policy  
14 and practice, Defendants failed to timely pay wages at termination.

15 57. Further, in violation of the Labor Code and the Wage Order, Defendants failed to  
16 pay reporting time wages. In particular, Plaintiffs and the Aggrieved Non-Exempt employees  
17 reported to work at Defendants' direction, and were furnished with work for less than half their  
18 usual or scheduled day's work—all without proper compensation.

19 58. Plaintiffs and the Class Members are covered by applicable California IWC Wage  
20 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,  
21 section 11000 *et seq.*

### 22 CLASS ACTION ALLEGATIONS

23 59. Plaintiffs bring this action on their own behalf, as well as on behalf of each and  
24 every other person similarly situated, and thus, seeks class certification under California Code of  
25 Civil Procedure §382.

26 60. All claims alleged herein arise under California law for which Plaintiffs seek relief  
27 as authorized by California law.

28 61. The proposed class is comprised of and defined as: **all persons who are or were**

1 employed by the Defendants as hourly paid, non-exempt workers in restaurants in the State  
2 of California at any time from four years prior to the filing of this action<sup>1</sup> through resolution  
3 or trial of the matter. (hereinafter collectively referred to as the “Class” or “Class Members”).

4 62. Plaintiffs also seek to represent Subclasses included in the Plaintiffs’ Class, which  
5 are composed of Class Members satisfying the following definitions:

6 a. All Class Members who were not paid at least minimum wage for all hours  
7 worked (collectively “**Minimum Wage Subclass**”);

8 b. All Class Members who were automatically clocked out at midnight  
9 (collectively “**Automatic Clock-out Subclass**”);

10 c. All Class Members who were required to complete Covid-19 check  
11 procedures off the clock (collectively “**Covid-19 Screening Subclass**”);

12 d. All Class Members who were not accurately paid overtime for hours worked  
13 over eight in a day or over forty in a workweek (collectively “**Overtime Subclass**”);

14 e. All Class Members who worked more than five (5) hours in a workday and  
15 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and  
16 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu  
17 thereof (hereinafter collectively referred to as the “**First Meal Period Subclass**”);

18 f. All Class Members who worked more than ten hours in a workday and were  
19 not provided with a timely, uninterrupted lawful second meal period of thirty (30) minutes, and  
20 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu  
21 thereof (hereinafter collectively referred to as the “**Second Meal Period Subclass**”);

22 g. All Class Members who worked more than three and a half hours in a  
23 workday and were not authorized and permitted to take a net 10-minute rest period for every four  
24 (4) hours or major fraction thereof worked per day and were not paid compensation of one hour  
25 premium wages at the employee’s regular rate in lieu thereof (hereinafter collectively referred to  
26 as the “**Rest Period Subclass**”);

27 h. All Class Members who were not reimbursed for all necessary expenditures

28 <sup>1</sup> As properly tolled by California Rule of Court App I. R.R. Emergency Rule 9

(collectively “**Indemnification Subclass**”);

i. All Class Members who did not receive all owed wages at time of separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the “**Waiting Time Subclass**”);

j. All Class Members who did not receive reporting time pay (hereinafter collectively referred to as the “**Reporting Time Subclass**”);

k. All Class Members who were not provided with accurate and complete itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement Subclass**”);

l. All Class Members who were employed by Defendants and subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business Practices Subclass**”).

63. Plaintiffs reserve the right, under Rule 3.765, California Rules of Court, to amend or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate, or if it should be deemed necessary by the Court or to further divide the Class Members into additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

64. As set forth in further detail below, this action has been brought and may properly be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of interest in the litigation, and the proposed Class and Subclasses are easily ascertainable through Defendants’ records.

a. Numerosity: The members of the Class and Subclasses are so numerous that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The membership of the entire Class and Subclasses is unknown to Plaintiffs at this time, however, the Class is estimated to be hundreds of individuals. Accounting for employee turnover during the relevant periods necessarily increases this number substantially. Plaintiffs allege Defendants’ employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

1                   b.       The proposed class is easily ascertainable. The number and identity of the  
2 class members are determinable from Defendants’ payroll records and time records for each class  
3 member.

4                   c.       Commonality: There are common questions of law and fact as to the Class  
5 and Subclasses that predominate over questions affecting only individual Class Members. These  
6 common questions of law and fact include, without limitation:

- 7                           1. Whether Defendants accurately paid Class Members for all hours worked;
- 8                           2. Whether Defendants knew or should have known that Class Members were  
9                                 required to perform work off the clock;
- 10                          3. Whether Defendants were required to compensate Class Members for  
11                                 Covid-19 screenings;
- 12                          4. Whether Defendants accurately calculated and paid all Class Members  
13                                 overtime premiums for the hours which Plaintiffs and Class Members  
14                                 worked in excess of eight (8) hours per day and/or forty (40) hours per week;
- 15                          5. Whether Defendants accurately paid employees double time for hours  
16                                 worked in excess of 12 hours in one day or for work over 8 hours in a day  
17                                 on the seventh day of work in a workweek;
- 18                          6. Whether Defendants had a policy and practice of providing lawful, timely  
19                                 meal periods in accordance with Labor Code § 512, as well as the applicable  
20                                 Industrial Welfare Commission (“IWC”) wage order;
- 21                          7. Whether Defendants had a policy and practice of complying with Labor  
22                                 Code section 226.7 and IWC Wage Order on each instance that a lawful,  
23                                 timely 30-minute uninterrupted meal period was not provided;
- 24                          8. Whether Defendants failed to authorize and permit a lawful, net 10-minute  
25 rest period to the Class Members for every four (4) hours or major fraction thereof worked;
- 26                          9. Whether Defendants required employees to remain on the premises during  
27 rest periods;

1 10. Whether Defendants had a policy and practice of complying with Labor  
2 Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not  
3 provided;

4 11. Whether Defendants failed to timely pay all wages upon separation in  
5 accordance with Labor Code sections 201-202;

6 12. Whether Defendants failed to reimburse employees for necessary expenses  
7 in accordance with Labor Code section 2802;

8 13. Whether Defendants failed to pay reporting time wages in accordance with  
9 Labor Code 1194, 1197, 1198, and IWC Wage Order 5-2001;

10 14. Whether Defendants omitted required information from itemized wage  
11 statements;

12 15. Whether Defendants failed to maintain accurate records of Class Members'  
13 earned wages, work periods, meal periods and deductions;

14 16. Whether Defendants engaged in unfair competition in violation of section  
15 17200 et seq. of the Business and Professions Code;

16 17. Whether Defendants' conduct was willful and/or reckless;

17 18. Whether Defendants failed to provide accurate itemized wage statements in  
18 violation of Labor Code § 226; and

19 19. The appropriate amount of damages, restitution, and/or monetary penalties  
20 resulting from Defendants' violations of California law.

21 d. Typicality: Plaintiffs are qualified to and will fairly and adequately protect  
22 the interests of each member of the Class and Subclasses with whom he has a well-defined  
23 community of interest. Plaintiffs' claims herein alleged are typical of those claims which could be  
24 alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the relief  
25 which would be sought by each member of the Class and/or Subclasses in separate actions. All  
26 members of the Class and/or Subclasses have been similarly harmed by Defendants' failure to  
27 provide lawful meal and rest periods, failure to reimburse expenses, failure to provide accurate  
28 wage statements, failure to timely pay wages at termination, failure to pay minimum wages,

1 rounding practices, and failure to accurately pay all wages earned including all owed premium and  
2 overtime wages, all due to Defendants' policies and practices that affected each member of the  
3 Class and/or Subclasses similarly. Further, Defendants benefited from the same type of unfair  
4 and/or wrongful acts as to each member of the Class and/or Subclasses.

5 e. Adequacy: Plaintiffs are qualified to and will fairly and adequately protect  
6 the interests of each member of the Class and/or Subclasses with whom he has a well-defined  
7 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that  
8 he has an obligation to make known to the Court any relationships, conflicts, or differences with  
9 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently  
10 known to exist. Plaintiffs' attorneys and the proposed counsel for the Class and Subclasses are  
11 versed in the rules governing class action discovery, certification, litigation, and settlement and  
12 experienced in handling such matters. Other former and current employees of Defendants may also  
13 serve as representatives of the Class and Subclasses if needed.

14 f. Superiority: The nature of this action makes the use of class action  
15 adjudication superior to other methods. A class action will achieve economies of time, effort,  
16 judicial resources, and expense, which would not be achieved with separate lawsuits. The  
17 prosecution of separate actions by individual members of the Class and/or Subclasses would create  
18 a risk of inconsistent and/or varying adjudications with respect to the individual members of the  
19 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and  
20 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the  
21 disposition of their interests through actions to which they were not parties. Thus, a class action is  
22 superior to other available means for the fair and efficient adjudication of this controversy because  
23 individual joinder of all Class Members is not practicable, and questions of law and fact common  
24 to the Class predominate over any questions affecting only individual Class Members. Each  
25 member of the Class has been damaged and is entitled to recovery by reason of Defendants'  
26 unlawful policies and practices that affected each member of the Class and/or Subclasses similarly.  
27 Class action treatment will allow those similarly situated persons to litigate their claims in the  
28 manner that is most efficient and economical for both parties and the judicial system. Plaintiffs are

1 unaware of any difficulties that are likely to be encountered in the management of this action that  
2 would preclude its maintenance as a class action.

3 g. Public Policy Considerations: Employers in the state of California violate  
4 employment and labor laws every day. However, current employees are often afraid to assert their  
5 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions  
6 because they believe their former employers may damage their future endeavors through negative  
7 references and/or other means. The nature of this action allows for the protection of current and  
8 former employees' rights without fear of retaliation or damage. Additionally, the citizens of  
9 California have a significant interest in ensuring employers comply with California's labor laws  
10 and in ensuring those employers who do not are prevented from taking further advantage of their  
11 employees.

12 **CLASS ACTION CLAIMS**

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(By Plaintiffs and the Class Against Defendants)**

16 65. Plaintiffs incorporate each and every allegation set forth in all of the foregoing  
17 paragraphs as if fully set forth herein.

18 66. Labor Code section 204 establishes the fundamental right of all employees in the  
19 State of California to be paid wages, including minimum wage, straight time and overtime, in a  
20 timely fashion for their work.

21 67. Labor Code section 1194(a) provides that notwithstanding any agreement to work  
22 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime  
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance  
24 of the full amount of this minimum wage or overtime compensation, including interest thereon,  
25 reasonable attorney's fees, and costs of suit.

26 68. Labor Code section 1197 provides: The minimum wage for employees fixed by the  
27 commission or by any applicable state or local law, is the minimum wage to be paid to employees,  
28 and the payment of a lower wage than the minimum so fixed is unlawful.

1           69. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer  
2 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC  
3 Wage Order(s).

4           70. The applicable wage orders and California Labor Code sections 1197 and 1182.12  
5 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by  
6 state law.

7           71. Labor Code sections 1194(a) and 1194.2(a) provide that an employee who has not  
8 been paid the legal minimum wage as required by Labor Code section 1197 may recover the unpaid  
9 balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount  
10 equal to the unpaid wages and interest accrued thereon.

11           72. During all relevant periods, the California Labor Code and wage orders required that  
12 Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all  
13 hours worked.

14           73. The IWC Wage Orders define "hours worked" as "the time during which an  
15 employee is subject to the control of an employer, and includes all the time the employee is suffered  
16 or permitted to work, whether or not required to do so."

17           74. At all times relevant, Plaintiffs and Class Members consistently worked hours for  
18 which they were not paid because Defendants frequently required Plaintiffs and the Class Members  
19 to work off the clock.

20           75. By way of example, during the liability period, Plaintiffs and, upon information and  
21 belief, the Class Members were required to take their temperature and answer Covid questions all  
22 prior to clocking in.

23           76. By way of further example, Plaintiffs and the Class Members frequently worked  
24 hours after midnight to complete duties despite Defendants' time clock program automatically  
25 clocking them out at midnight. Such time was not compensated and thus is off the clock work.

26           77. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and  
27 the Class Members were working off the clock and that they should have been paid for this time.

28           78. In addition, Defendants failed to pay at least minimum wage for all hours worked

1 because, upon information and belief, Defendants rounded hours worked against Plaintiffs and the  
2 Class Members' interests.

3 79. Defendant's policy and practice of not paying all minimum wages violates  
4 California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the  
5 applicable wage order 5-2001.

6 80. Due to Defendants' violations of the California Labor Code and wage orders,  
7 Plaintiffs and the Minimum Wage Subclass members are entitled to recover from Defendant their  
8 unpaid wages, statutory penalties, reasonable attorneys' fees and costs in this action, and pre-  
9 judgment and post-judgment interest, as well as liquidated damages.

10  
11 **SECOND CAUSE OF ACTION**  
12 **FAILURE TO PAY OVERTIME OWED**

13 **(By Plaintiffs and the Class Against All Defendants)**

14 81. Plaintiffs incorporate each and every allegation set forth in all of the foregoing  
15 paragraphs as if fully set forth herein.

16 82. During all relevant periods, Defendant required Plaintiffs and the Class members to  
17 work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours  
18 per workweek.

19 83. During all relevant periods, both the California Labor Code sections 1194, 1197,  
20 510, 1198, and the pertinent wage order 5-2001 required that all work performed by an employee  
21 in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in  
22 excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the  
23 employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required  
24 to be compensated at the rate of no less than twice the regular rate of pay for an employee. In  
25 addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required  
26 to be compensated at the rate of no less than twice the regular rate of pay of an employee.

27 84. During all relevant periods, Defendants had a uniform policy of requiring Plaintiffs  
28 and the Class members to work in excess of eight (8) hours in a workday and/or in excess of forty

(40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their regular rate of pay. Upon information and belief, Defendants also failed to properly compensate Plaintiffs and the Class Members for hours worked in excess of twelve (12) hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

85. The IWC Wage Orders define “hours worked” 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.”

86. At all times relevant, Plaintiffs and Class Members consistently worked hours for which they were not paid because Plaintiffs and the Class Members were required to work off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40) hours in a workweek and should have been paid at the overtime rate.

87. Plaintiffs are informed and believe that Defendants were aware that Plaintiffs and the Class Members were working off the clock and that they should have been paid for this time.

88. In addition, upon information and belief, Defendants failed to incorporate all forms of compensation, including without limitation bonuses, differentials, and incentives, into the regular rate for overtime purposes.

89. As a result, Defendants failed to pay Plaintiffs and the Class members earned overtime wages and such employees suffered damages as a result.

90. Defendants knew or should have known Plaintiffs and the Class Members were undercompensated as a result of these practices.

91. Due to Defendant’s violations of the California Labor Code, Plaintiffs and the Class members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys’ fees and costs in this action, and pre-judgment and post-judgment interest, statutory penalties, and liquidated damages.

### **THIRD CAUSE OF ACTION**

#### **FAILURE TO PROVIDE LAWFUL MEAL PERIODS**

#### **(By Plaintiffs and the Meal Period Subclasses Against All Defendants)**

92. Plaintiffs incorporate by reference and realleges each and every allegation contained

1 above, as though fully set forth herein.

2 93. Pursuant to Labor Code § 512, no employer shall employ an employee for a work  
3 period of more than five (5) hours without providing a meal break of not less than thirty (30)  
4 minutes in which the employee is relieved of all of his or her duties, except that when a work period  
5 of not more than six (6) hours will complete the day's work the meal period may be waived by  
6 mutual consent of the employer and employee.

7 94. For the four (4) years preceding the filing of this lawsuit as properly tolled by  
8 Emergency Rule 9, Defendants failed to provide Plaintiffs and Class Members timely and  
9 uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a  
10 shift.

11 95. As a consequence of Defendants' policies and practices, requirements, demands,  
12 coverage and staffing, Plaintiffs and the Class Members were often required to forego such meal  
13 periods, take shortened meal periods, and/or commence their meal periods into and beyond the  
14 sixth hour of their shifts.

15 96. Upon information and belief, Plaintiffs and the Class Members were not paid one  
16 hour of pay at their regular rate for each day that a meal period was not lawfully provided.

17 97. Moreover, as a matter of policy and practice, upon information and belief, the Class  
18 members were also not provided second meal periods on days when shifts exceeded ten hours (and  
19 twelve hours), nor were they provided premium wages in lieu of a second meal period. On  
20 information and belief, Plaintiffs and the Class Members did not waive their rights to a second meal  
21 period on shifts in excess of ten hours.

22 98. As a proximate result of the aforementioned violations, Plaintiffs and the Class  
23 Members have been damaged in an amount according to proof at time of trial.

24 99. Pursuant to Labor Code § 226.7, Plaintiffs and Class Members are entitled to recover  
25 one (1) hour of premium pay for each day in which a meal period violation occurred. They are also  
26 entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

27 100. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to  
28 represent have been deprived of premium wages in amounts to be determined at trial, and are

1 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,  
2 under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code  
3 section 3287.

#### 4 **FOURTH CAUSE OF ACTION**

##### 5 **FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS**

##### 6 **(By Plaintiffs and the Rest Period Subclasses Against All Defendants)**

7 101. Plaintiffs incorporate by reference and realleges each and every allegation contained  
8 above, as though fully set forth herein.

9 102. Pursuant to the IWC wage orders applicable to Plaintiffs' and Class Members'  
10 employment by Defendants, "Every employer shall authorize and permit all employees to take rest  
11 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized  
12 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net  
13 rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall  
14 be counted as hours worked, for which there shall be no deduction from wages."

15 103. Labor Code §226.7(a) prohibits an employer from requiring any employee to work  
16 during any rest period mandated by an applicable order of the IWC.

17 104. Defendants were required to authorize and permit employees such as Plaintiffs and  
18 Class Members to take rest periods during shifts in excess of 3.5 hours, based upon the total hours  
19 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof,  
20 with no deduction from wages.

21 105. Despite said requirements of the IWC wage orders applicable to Plaintiffs' and Class  
22 Member's employment with Defendants, Defendants failed and refused to authorize and permit  
23 Plaintiffs and Class Members to take lawful, net ten (10) minute rest periods for every four (4)  
24 hours worked, or major fraction thereof. Such rest breaks, when provided, were frequently  
25 untimely or less than net ten minutes because of the work requirements imposed by Defendants,  
26 and frequent calls during rest periods.

27 106. Defendants did not pay Plaintiffs one additional hour of pay at his regular rate of  
28 pay for each day that a rest period violation occurred. On information and belief, the other members

1 of the Class endured similar violations as a result of Defendants' rest period policies and practices  
2 and Defendant did not pay said Class Members premium pay as required by law.

3 107. By their failure to authorize and permit Plaintiffs and the Class Members to take a  
4 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction  
5 thereof worked, including failure to provide two (2) total rest periods on six to ten hour shifts and  
6 three (3) total ten (10) minute rest periods on days on which Plaintiffs and the other Class Members  
7 work(ed) work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide  
8 compensation for such unprovided rest periods as alleged herein, Defendants willfully violated the  
9 provisions of Labor Code sections 226.7 and the applicable IWC Wage Order(s).

10 108. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to  
11 represent have been deprived of premium wages in amounts to be determined at trial, and are  
12 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,  
13 under Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287.

#### 14 **FIFTH CAUSE OF ACTION**

#### 15 **FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING** 16 **EMPLOYMENT**

17 **(By Plaintiffs and the Class Against All Defendants)**

18 109. Plaintiffs incorporate by reference and realleges each and every allegation contained  
19 above, as though fully set forth herein.

20 110. Labor Code section 204 requires that all wages are due and payable twice in each  
21 calendar month.

22 111. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became  
23 due and payable to each employee in each month that he or she was not provided with a meal period  
24 or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled.

25 112. Defendants violated Labor Code § 204 by systematically refusing to pay wages due  
26 under the Labor Code.

27 113. Labor Code section 210 (a) provides that "In addition to, and entirely independent  
28 and apart from, any other penalty provided in this article, every person who fails to pay the wages

of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

103. As a result of the unlawful acts of Defendants, Plaintiffs and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, penalties, plus interest thereon, attorneys fees, and costs, pursuant to Labor Code § 210, 218.5, 218.6, 510, 1194.

#### **SIXTH CAUSE OF ACTION**

##### **FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION**

##### **(By Plaintiffs and the Waiting Time Subclass Against All Defendants)**

114. Plaintiffs incorporate by reference and realleges each and every allegation contained above, as though fully set forth herein.

115. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

116. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

117. Plaintiffs and Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, and premium meal and rest period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

118. In addition, irrespective of any derivative violation, Defendants failed to timely pay Plaintiffs and, upon information and belief, other Class Members earned compensation at the time

1 of termination despite their obligations under Labor Code 201 and 202.

2 119. More than thirty (30) days have passed since affected Waiting Time Subclass  
3 Members have left Defendants' employ, and on information and belief, they have not received  
4 payment pursuant to Labor Code § 203.

5 120. Plaintiffs and Waiting Time Subclass Members are thus entitled to 30 days' wages  
6 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO REIMBURSE NECESSARY EXPENSES**

9 **(By Plaintiffs and the Indemnification Subclass Against All Defendants)**

10 121. Plaintiffs incorporate by reference and realleges each and every allegation contained  
11 above, as though fully set forth herein.

12 122. Plaintiffs repeat and incorporates herein by reference each and every allegation set  
13 forth above, as though fully set forth herein.

14 123. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class  
15 Members for necessary expenditures incurred in direct consequence of the discharge of his or her  
16 duties.

17 124. Plaintiffs and the members of the Indemnification Class were required to incur  
18 expenses in the performance of their assigned job duties.

19 125. Upon information and belief, the Defendants did not reimburse Plaintiffs or the  
20 Plaintiffs' subclass for such expenses.

21 126. As a result of the unlawful acts of Defendants, Plaintiffs and the Plaintiffs'  
22 Subclass Members have been deprived of un-reimbursed sums in amounts to be determined at  
23 trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon,  
24 attorneys' fees, and costs, pursuant to Labor Code §2802.

25 **EIGHTH CAUSE OF ACTION**

26 **FAILURE TO PAY REPORTING TIME WAGES**

27 **(By Plaintiffs and Reporting Time Subclass Against Defendants)**

28 127. Plaintiffs incorporate by reference and realleges each and every allegation contained

1 above, as though fully set forth herein.

2 128. Labor Code section 1197 makes it unlawful to pay an employee less than the  
3 minimum wage as established by the Industrial Welfare Commission.

4 129. Labor Code section 1198 provides that the maximum hours of work and the standard  
5 conditions of labor fixed by the commission shall be the maximum hours of work and the standard  
6 conditions of labor by the commission shall be the maximum hours of work and the standard  
7 conditions of labor for employees. The employment of any employee for longer hours than those  
8 fixed by the order or under conditions of labor prohibited by the order is unlawful.

9 130. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001.

10 131. In relevant part, Section 5 of the applicable wage order provides:

11 (A) Each workday an employee is required to report for work and does report, but is not  
12 put to work or is furnished less than half said employee's usual or scheduled day's work,  
13 the employee shall be paid for half the usual or scheduled day's work, but in no event for  
14 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.

15 132. Defendants failed to pay reporting time wages. In particular, Plaintiffs and the Class  
16 Members were forced to report to work and were furnished with less than half the employee's usual  
17 or scheduled day's work.

18 133. In fact, on numerous occasions, Plaintiffs and Class Members reported to work at  
19 Defendants' direction, and then were sent home – without the legal compensation.

20 134. By failure to pay hourly wages for reporting time, Defendants willfully violated  
21 Labor Code sections 1194, 1197, 1198, and IWC Wage Orders 5-2001.

22  
23  
24  
25 **NINTH CAUSE OF ACTION**

26 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
27 **EMPLOYEE WAGE STATEMENT PROVISIONS**

28 **(By Plaintiffs Evans and Lopez and Wage Statement Subclass Against Defendants)**

1           135. Plaintiffs repeat and incorporates herein by reference each and every allegation set  
2 forth above, as though fully set forth herein.

3           136. Labor Code section 226(a) reads in pertinent part: “Every employer shall,  
4 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either  
5 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately  
6 when wages are paid by personal check or cash, an accurate itemized statement in writing  
7 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...  
8 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
9 name of the employee and only the last four digits of his or her social security number or an  
10 employee identification number other than a social security number, (8) the name and address of  
11 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the  
12 pay period and the corresponding number of hours worked at each hourly rate by the  
13 employee....”.

14           137. Further, the IWC Wage Orders require in pertinent part: Every employer shall  
15 keep accurate information with respect to each employee including the following: (3) Time  
16 records showing when the employee begins and ends each work period. Meal periods, split shift  
17 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the  
18 payroll period and applicable rates of pay....”

19           138. Labor Code section 1174 of the California also requires Defendants to maintain  
20 and preserve, in a centralized location, among other items, records showing the names and  
21 addresses of all employees employed and payroll records showing the hours worked daily by, and  
22 the wages paid to, its employees. On information and belief and based thereon, Defendants have  
23 knowingly and intentionally failed to comply with Labor Code section 1174, including by  
24 implementing the policies and procedures and committing the violations alleged in the preceding  
25 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is  
26 unlawful pursuant to Labor Code section 1175.

27           139. Defendants have failed to record many of the items delineated in applicable  
28 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section

1 1174, including by virtue of the fact that each wage statement which failed to accurately  
2 compensate Plaintiffs and Class Members for all hours worked and for missed and non-provided  
3 meal and rest periods, or which failed to include compensation for all minimum wages earned or  
4 overtime hours worked, was an inaccurate wage statement.

5 140. On information and belief, Defendants failed to implement and preserve a lawful  
6 record-keeping method to record all non-provided meal and rest periods owed to employees or all  
7 hours worked, as required for Non-Exempt Employees under California Labor Code section 226  
8 and applicable California Wage Orders. In order to determine if they had been paid the correct  
9 amount and rate for all hours worked, Plaintiffs and Class Members have been, would have been,  
10 and are compelled to try to discover the required information missing from their wage statements  
11 and to perform complex calculations in light of the inaccuracies and incompleteness of the wage  
12 statements Defendants provided to them.

13 141. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC  
14 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage  
15 Statement Class with an accurate itemized statement in writing accurately reflecting all of the  
16 required information. Here, Plaintiffs assert the Defendant omitted required information, failed to  
17 accurately include all applicable hourly rates on the wage statements and the corresponding  
18 number of hours worked at such rates or hours paid at such rates. By way of further example,  
19 certain hours on the pay stubs were double counted and inaccurately reflected hours worked.

20 142. In addition, Defendants have failed to provide accurate itemized wage statements  
21 as a consequence of the above-specified violations for failure to accurately pay all wages owed,  
22 accurately record all hours worked, and failure to pay meal and rest period premiums as required  
23 by law.

24 143. Moreover, upon information and belief, as a pattern and practice, in violation of  
25 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain  
26 accurate records pertaining to the total hours worked for Defendants by the members of the Wage  
27 Statement Class, including but not limited to, beginning and ending of each work period, meal  
28 period and split shift interval, the total daily hours worked, and the total hours worked per pay

1 period and applicable rates of pay.

2 144. Plaintiffs and the members of the Wage Statement Class have suffered injury as a  
3 result of Defendants' failure to maintain accurate records for the members of the Wage Statement  
4 Class in that the members of the Wage Statement Class were not timely provided written accurate  
5 itemized statements showing all requisite information, such that the members of the Wage  
6 Statement Class were misled by Defendants as to the correct information regarding various items,  
7 including but not limited to total hours worked by the employee, net wages earned and all  
8 applicable hourly rates in effect during the pay period and the corresponding number of hours  
9 worked at each hourly rate.

10 145. Pursuant to Labor Code section 226, and in light of Defendants' violations  
11 addressed above, Plaintiffs and the Wage Statement Class Members are each entitled to recover  
12 up to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

#### 13 TENTH CAUSE OF ACTION

#### 14 VIOLATION OF THE UNFAIR COMPETITION LAW

#### 15 (By Plaintiffs and Class Against All Defendants)

16 146. Plaintiffs incorporate by reference and realleges each and every allegation contained  
17 above, as though fully set forth herein.

18 147. Defendants' conduct, as alleged in this complaint, has been, and continues to be,  
19 unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the  
20 general public. Plaintiffs also seeks to enforce important rights affecting the public interest within  
21 the meaning of the California Code of Civil Procedure § 1021.5.

22 148. Defendants' policies, activities, and actions as alleged herein are violations of  
23 California law and constitute unlawful business acts and practices in violation of California  
24 Business and Professions Code §§ 17200, *et seq.*

25 149. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be  
26 predicated on the violation of any state or federal law.

27 150. The state law violations, including violations of the relevant IWC Wage Order,  
28 detailed herein above are the predicate violations for this cause of action. By way of example only,

1 in the instant case Defendants' policy of failing to lawfully provide Plaintiffs and the Class with  
2 timely meal and rest periods or pay one (1) hour of premium pay when a meal or rest period was  
3 not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders.  
4 Defendants further violated the law through their policies of failing to fully and accurately  
5 compensate Plaintiffs and the Class Members for all hours worked, including minimum wages and  
6 overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate  
7 itemized wage statement as specified above.

8 151. Plaintiffs and the Class Members have been personally aggrieved by Defendants'  
9 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

10 152. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiffs  
11 and the Class Members are entitled to restitution of the wages withheld and retained by Defendants  
12 during a period that commences four (4) years prior to the filing of this complaint; an award of  
13 attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of  
14 costs.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray judgment against Defendants, jointly and severally, as  
17 follows:

18 **Class Certification**

- 19 1. That this action be certified as a class action;  
20 2. That Plaintiffs be appointed as the representatives of the Class;  
21 3. That Plaintiffs be appointed as the representatives of the Subclasses; and  
22 4. That counsel for Plaintiffs be appointed as counsel for the Class and Subclasses.

23 **On the First Cause of Action**

24 **(Failure to pay minimum wages)**

- 25 1. For the unpaid balance of the full amount of any minimum wages, and regular wages  
26 owed, as well as interest thereon,  
27 2. Penalties according to statute,  
28 3. Liquidated damages,

4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

**On the Second Cause of Action**

**(Failure to pay overtime)**

1. For the unpaid balance of the full amount of any overtime wages owed, as well as interest thereon,
2. Penalties according to statute,
3. Liquidated damages,
4. Reasonable attorneys' fees, and costs of suit;
5. For interest and
6. For such other and further relief as the Court deems proper.

**On the Third Cause of Action**

**(Failure to Provide Lawful Meal Periods)**

1. For one (1) hour of premium pay for each day in which a required meal period was not lawfully provided;
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

**On the Fourth Cause of Action**

**(Failure to Authorize and Permit Lawful Rest Periods)**

1. For one (1) hour of premium pay for each day in which a required rest period was not lawfully authorized and permitted; and
2. For reasonable attorneys' fees and costs pursuant to statute; and
3. For such other and further relief as the Court deems proper.

**On the Fifth Cause of Action**

**(Failure to Timely Pay Wages Due and Payable During Employment)**

1. For unpaid wages;

2. For penalties pursuant to Labor Code § 210 and 25% of the amount of wages unlawfully withheld;

3. For interest;

4. For reasonable attorneys' fees and costs pursuant to statute; and

5. For such other and further relief as the Court deems proper.

**On the Sixth Cause of Action**

**(Failure to Timely Pay Wages At Separation)**

6. For unpaid wages;

7. For penalties pursuant to Labor Code § 203;

8. For interest;

9. For reasonable attorneys' fees and costs pursuant to statute; and

10. For such other and further relief as the Court deems proper.

**On the Seventh Cause of Action**

**(Failure to Reimburse Necessary Expenses)**

1. For unreimbursed sums;

2. For reasonable attorneys' fees and costs pursuant to statute;

3. For interest; and

4. For such other and further relief as the Court deems proper.

**On the Eighth Cause of Action**

**(Failure to Pay Reporting Time Wages)**

1. For unpaid wages;

2. For reasonable attorneys' fees and costs pursuant to statute;

3. For interest; and

4. For such other and further relief as the Court deems proper.

**On the Ninth Cause of Action**

**(Failure to Provide Accurate Itemized Wage Statements)**

1. For statutory penalties, including penalties pursuant to Labor Code section 226;

2. For reasonable attorneys' fees and costs; and

1           3.       For such other and further relief as the Court deems proper;

2                               **On the Tenth Cause of Action**

3                               **(Violation of the Unfair Competition Law)**

4           1.       That Defendants, jointly and/or severally, pay restitution and/or disgorgement of  
5 sums to Plaintiffs and Class Members for the Defendants' past failure to pay minimum, overtime  
6 and regular wages, for Defendants' past failure to reimburse necessary expenses, and for premium  
7 wages for meal and rest periods that were not provided to Plaintiffs and Class Members over the  
8 last four (4) years in an amount according to proof;

9           2.       For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to  
10 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194, 1197,  
11 1198 ;

12          3.       For pre-judgment interest on any unpaid minimum, regular and overtime wages due  
13 from the day that such amounts were due;

14          4.       For costs of suit incurred herein that Plaintiffs and Class Members are entitled to  
15 recover under the Labor Code; and

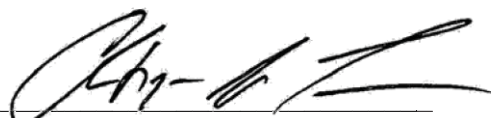
16          5.       For such other and further relief as the Court deems proper.

17  
18                               **DEMAND FOR JURY TRIAL**

19          Plaintiffs, on behalf of the Class and Subclasses, respectfully demand a jury trial in this  
20 matter to the fullest extent available under the law.

21                                               Respectfully submitted,

22  
23  
24       Dated: February 1, 2022

25                                                 
26                                               JAMES HAWKINS, APLC  
James R. Hawkins, Esq.  
Christina M. Lucio, Esq.

27                                               Attorneys for Tasha Banning, Demarco Evans, and Hope  
28                                               Lopez, on behalf of themselves and all others similarly  
situated