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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Vanessa Sezenol, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SEMIRA TRUJILLO, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

FFC SAN DIEGO, LLC; KC BELL, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2022-00046517-CU-OE-CTL

*Assigned to the Hon. Joel R. Wohlfeil
Dept. C-73*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Unpaid Wages
2. Meal Period Violations
3. Rest Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. PAGA Civil Penalties

Action Filed: Nov. 17, 2022
CMC: Apr. 21, 2023 at 1:30 p.m.

1 Plaintiff SEMIRA TRUJILLO (“Plaintiff”), individually and on behalf of all others similarly
2 situated and the State of California under the Private Attorneys General Act brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants FFC
4 SAN DIEGO, LLC; KC BELL, INC.; and DOES 1 through 50, inclusive (collectively “Defendants”),
5 alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action for wage and hour violations of the California
8 Labor Code. Defendants own and operate fast food franchises throughout the state of California and
9 across the country.

10 2. Defendants failed to compensate Plaintiff and Class Members for all hours worked at
11 the lawful minimum wage, resulting in unpaid minimum wages. Defendants had a practice of altering
12 employees’ records to reflect less hours worked and unlawfully requiring Plaintiff and Class Members
13 to complete training off the clock.

14 3. Defendants failed to provide complaint first and second meal periods. Plaintiff
15 consistently worked over 5 and 6 hour scheduled shifts during “rush hours” with high consumer-
16 demand and inadequate support. When Plaintiff was not permitted to take either or both first and
17 second meal periods Defendants failed to pay meal period premiums.

18 4. Similarly, Defendants also did not provide fully compliant first and rest periods during
19 those shifts and failed to pay Plaintiff and Class Members rest period premiums in violation of the
20 California Labor Code.

21 **JURISDICTION & VENUE**

22 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution as the causes of action are premised upon violations of California law.

24 6. The monetary damages and restitution sought by Plaintiff exceed the minimal
25 jurisdiction limits of the Superior Court.

26 7. This Court has jurisdiction over Defendants because, upon information and belief,
27 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
28 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction

1 over them by the California courts consistent with traditional notions of fair play and substantial
2 justice.

3 8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
4 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
5 of the alleged violations in this county.

6 **PARTIES**

7 **A. Plaintiff Semira Trujillo**

8 9. Plaintiff Trujillo is an individual over 18 years of age who worked for Defendants in
9 California as a non-exempt employee from about July 15, 2022 to September 13, 2022. Plaintiff
10 worked as a ColdLine Team Member.

11 10. The State of California, via the Labor and Workforce Development Agency
12 (“LWDA”), is the real party in interest in this action in this action. (*Kim v. Reins Int’l California, Inc.*
13 (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the
14 real party in interest.”])

15 **B. Defendants**

16 11. Defendant FFC San Diego, LLC is a Kansas limited liability company that maintains
17 operations and conducts business throughout the State of California, including in this county.

18 12. Defendant KC Bell, Inc. is a Kansas corporation that maintains operations and conduct
19 business throughout the State of California, including in this county.

20 13. The true names and capacities, whether individual, corporate, or otherwise, of the
21 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain to Plaintiff,
22 who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
23 informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiff and is responsible
24 in some manner for the acts and omissions alleged herein. Plaintiff may seek leave to amend this
25 Complaint to reflect their true names and capacities once ascertained.

26 14. Plaintiff is informed, believes, and alleges that all Defendants in this action are
27 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
28 of the Defendants exercised control over the wages, hours, and working conditions of Plaintiff and

1 other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as
2 employees under California law.

3 15. Plaintiff is informed, believes, and alleges that at least some of the Defendants have
4 common ownership, common management, interrelationship of operations, and centralized control
5 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
6 responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558,
7 558.1, and 1197.1

8 16. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
9 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
10 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such
11 that the acts and omissions of each defendant may be legally attributable to all others.

12 **CLASS ALLEGATIONS**

13 17. Plaintiff brings this action individually and on behalf of the following class pursuant to
14 Code of Civil Procedure section 382:

15 a. All current and former non-exempt employees who worked for Defendants in
16 California at any time from four years (plus the additional 178-day statutory
17 tolling period under Emergency Rule 9) prior to the filing of this action through
18 date of class certification.

19 18. Plaintiff reserves the right to establish various subclass definitions as appropriate at the
20 class certification stage, according to proof.

21 19. The class is ascertainable and shares a well-defined community of interest in this
22 litigation:

23 a. Numerosity: Although the precise membership of the entire class is unknown
24 to Plaintiff at this time, Plaintiff estimates the class to exceed 50 individuals.
25 The class members are so numerous that joinder of all class members is
26 impracticable. The identity of class members is readily ascertainable by
27 inspection of Defendants' employment records.

- 1 b. Typicality: Plaintiff’s claims are typical of the claims of the other class
2 members. Plaintiff and class members were subject to the same policies and
3 practices of Defendants, which resulted in losses to Plaintiff and Class
4 Members. Proof of common unlawful business practices, which Plaintiff
5 experienced and is representative of, will establish the right of the class to
6 recover on the causes of action alleged herein.
- 7 c. Adequacy: Plaintiff is an adequate class representative. Plaintiff will take all
8 necessary steps to adequately and fairly represent and protect the interests of
9 the class. Plaintiff has no interest antagonistic to other class members. Plaintiff
10 is represented by attorneys who have substantial experience prosecuting,
11 defending, resolving, and litigating wage and hour class, collective, and
12 representative actions in California state and federal courts.
- 13 d. Superiority: A class action is superior to other means for adjudicating this
14 dispute. Individual joinder is impractical. Class treatment will allow for
15 common issues to be resolved in a single forum, simultaneously, and without
16 duplication of effort and expense.
- 17 e. Public Policy Considerations: Certification of this lawsuit as a class action
18 advances the State of California’s strong public interest in ensuring its
19 approximately millions of employed residents are properly paid the wages they
20 earned for the hours they worked. Class actions provide a mechanism for
21 enforcement of labor laws and allow for vindication of employee rights by
22 unnamed class members.

23 20. Common questions of law and fact as to the class members predominate over questions
24 affecting only individual members. The common questions of law and fact exist as to whether the
25 employment policies and practices formulated by Defendants and applied to the class members
26 constitute violate California law.

GENERAL ALLEGATIONS

21. Defendants failed to pay Plaintiff and Class Members at the lawful minimum wage for all hours worked, resulting in unpaid minimum wages.

22. First, Defendants had a policy and practice of editing employees' time records to reflect less hours worked on the timecard and avoid the payment of meal and rest period premiums. Due to this timesaving practice, all hours worked were not directly compensated, resulting in the minimum wage violations.

23. Defendants engaged in a pattern of editing employee's time records that resulted in an underpayment of wages. The revisions were made without employees' knowledge or consent.

24. Second, Plaintiff and Class Members were required to complete onboarding and training off the clock without pay. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were required to review and complete documents and online trainings without pay.

25. Plaintiff alleges that the training records, when compared to the time records showing what hours were compensated, for the Class Members will reflect unpaid training hours in an amount to be proven in trial.

26. Defendants failed to provide compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff experienced missed, late, short, and interrupted meal periods due to high customer demand during "rushes" and staffing issues because of the high turn-over within the company.

27. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and Class Members a meal period premium in violation of Labor Code section 226. The time records reflect shifts more than 5 and 6 hours without a corresponding 30-minute unpaid meal period premium payment in lieu of such a meal period.

28. Plaintiff and Class Members were not subject to a meal period waiver agreement (and one has not been produced in Plaintiff's personnel file). Even if such an agreement existed, an employee does not have the ability to waive their second meal period after their sixth hour of work under Labor Code section 512(a).

1 29. Plaintiff’s time records establish meal period liability on their face. “[T]ime records
2 showing noncompliant meal periods raise a rebuttable presumption of meal period violations,
3 including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58.

4 30. Based on the same practices that resulted in Plaintiff’s and Class Members’ inability to
5 take compliant meal periods, Defendants equally failed in their obligations to consistently provide
6 compliant rest periods to employees or provide a corresponding rest premium payment in lieu of a
7 missed rest period. Defendants also has a policy and practice of not paying rest period payments when
8 due.

9 31. Defendants purportedly recorded the paid 10-minute rest periods. As such Plaintiff’s
10 time records also establish rest period liability on their face. The time records routinely establish
11 Plaintiff was required to work over six hours and was not permitted to take any rest periods, despite
12 being entitled to a second ten minute, uninterrupted and duty-free rest period after the sixth hour of
13 work.

14 32. Defendants failed to timely pay all wages and premiums owed to Plaintiff and Class in
15 each pay period in which such wages were earned at the lawful rate during and at separation of
16 employment.

17 33. Defendants additionally failed to pay waiting time penalties for the untimely payments
18 and are now subject to civil penalties for such violations.

19 34. Defendants failed to provide accurate itemized wage statements to Plaintiff and Class
20 Members in compliance with the requirements set forth in Labor Code §§ 226(a). Failing to include
21 all regular and premium wages for meal and rest periods due resulted in Defendants failure to
22 accurately state all gross wages earned, total hours worked, net wages earned, and all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at those respective
24 rates.

25 35. Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross
26 wages earned” as employees earned regular wages and meal and rest premiums, but were instead
27 underpaid, resulting in inaccurate reflection of “gross wages earned” on those wage statements.
28 Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the

1 same reasons, as the “net wages earned are depreciated and underpaid resulting in an inaccurate
2 reflection on the pay stub.

3 36. Defendants also violated section 226(a)(2) by not accurately listing the total hours
4 worked on the wage statement. This was due to Defendants’ policy and practice of editing and
5 reducing hours worked (*i.e.*, timeshaving) on the employees’ time records, as described above).

6 37. The wage statements provided by Defendants to Plaintiff in response to her statutory
7 records request reflects a wage statement failing to show the name and address of the legal employer
8 in violation of Labor Code section 226(a)(8) and the hourly rates in violation of Labor Code section
9 226(a)(9).

10 38. These wage statement violations created significant confusion among Plaintiff and
11 other aggrieved employees with respect to what amounts were owed and paid, at what rates, the
12 number of hours worked, and how those amounts were or should be calculated. The wage statements
13 reflect a false statement of earnings and concealed the underlying problems and underpayments of
14 employee wages.

15 39. Defendants’ failure to pay such premium payments each pay period or upon separation
16 of employment, rendered the payments untimely and subject to civil penalties for the violations
17 committed against the aggrieved employees under Labor Code §§ 201 through 203.

18 40. For the same reasons, Defendants violated Labor Code section 1174, which requires
19 employers maintain “payroll records showing the hours worked daily by and the wages paid to, and
20 the number of piece-rate units earned by, and any applicable piece rate paid to, employees employed
21 at the respective restaurants.

22 **FIRST CAUSE OF ACTION**

23 **UNPAID MINIMUM WAGES**

24 **Violation of Labor Code §§ 1194 and 1197**

25 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

26 41. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 42. Defendants willfully failed in their affirmative obligation to pay Plaintiff and Class
28 Members at least the lawful minimum wage for each hour worked in violation of Labor Code sections

1 1182.12, 1194, 1194.2 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
2 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
3 local and county minimum wage ordinances in effect.

4 43. Defendants’ unlawful acts and omissions deprived Plaintiff and Class Members of
5 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and Class
6 Members are entitled to recover to the full amount of the unpaid wages, plus liquidated damages in an
7 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
8 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

9 **SECOND CAUSE OF ACTION**

10 **MEAL PERIOD VIOLATIONS**

11 **Violation of Labor Code §§ 226.7 and 512**

12 44. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 45. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
14 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
15 meal period premiums in lieu thereof), and which further provide a private right of action for an
16 employer’s failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
17 regular rate of compensation.

18 46. Defendants willfully failed in their affirmative obligation to consistently provide
19 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
20 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
21 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
22 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the “Meal Periods”
23 sections of the applicable orders).

24 47. Further, Defendants willfully failed in their affirmative obligation to consistently pay
25 Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation
26 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
27 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the “Meal Periods” sections of the
28 applicable orders).

1 48. Plaintiff and Class Members are entitled to recover to the full amount of the meal period
2 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
3 the extent permitted by law.

4 **THIRD CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **Violation of Labor Code §§ 226.7**

7 49. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

8 50. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
9 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
10 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
11 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
12 regular rate of compensation.

13 51. Defendants willfully failed in their affirmative obligation to consistently authorize and
14 permit Plaintiff and Class Members to receive compliant, duty-free rest periods of not less than ten
15 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
16 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
17 applicable orders).

18 52. Further, Defendants willfully failed in their affirmative obligation to consistently pay
19 Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation
20 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
21 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

22 **FOURTH CAUSE OF ACTION**

23 **UNTIMELY PAYMENT OF WAGES**

24 **Violation of Labor Code §§ 204 *et seq.***

25 53. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 54. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
27 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
28 period, and which further provide a private right of action for an employer's failure to comply with

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

3 55. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice
5 during each calendar month on days designated in advance by the employer as regular paydays (for
6 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
7 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
8 "Minimum Wages" sections of the applicable orders).

9 56. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,
10 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
11 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
12 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
13 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

14 **FIFTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

17 57. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 58. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation.

22 59. Defendants knowingly and intentionally failed in their affirmative obligation provide
23 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
24 Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not
25 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

26 60. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
27 accurate itemized wage statements, causing confusion and concealing wage and premium
28 underpayments.

61. As a result, Plaintiff and Class Members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq.*

62. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

63. This cause of action is brought by the Waiting Time Class pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

64. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and members of the Waiting Time Class immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

65. Plaintiff and the Waiting Time Class are entitled to recover to a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

66. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 67. Defendants have engaged and continue to engage in unfair and/or unlawful business
2 practices in the State of California in violation of California Business and Professions Code § 17200
3 by failing committing the foregoing wage and hour violations alleged throughout this Complaint.

4 68. Defendants' dependance on these unfair and/or unlawful business practices deprived
5 Plaintiff and continue to deprive other Class Members of compensation to which they are legally
6 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to
7 Defendants over competitors who have been and/or are currently employing workers in compliance
8 with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair
9 business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

10 69. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this
11 Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full
12 restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired,
13 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

14 70. Plaintiff and Class Members are entitled to injunctive relief against Defendants,
15 restitution, and other equitable relief to return all funds over which Plaintiff and Class Members have
16 an ownership interest and to prevent future damage and the public interest under Business and
17 Professions Code § 17200 *et seq.* Plaintiff and Class Members are further entitled to recover interest,
18 attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure
19 § 1021.5.

20 **EIGHTH CAUSE OF ACTION**

21 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

22 **Violation of Labor Code §§ 2698 *et seq.***

23 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

24 71. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 72. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
26 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
27 codified as Labor Code section 2698 *et seq.*:
28

1 a. All current and former non-exempt employees who worked for Defendants in
2 California at any time from one year prior to the postmark date of the initial
3 PAGA notice through date of trial.

4 73. Plaintiff reserves the right to amend, supplement, or add to this description of the
5 aggrieved employees according to proof.

6 74. The State of California, via the Labor and Workforce Development Agency
7 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
8 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
9 files suit is always the real party in interest.”])

10 75. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
11 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
14 action brought by an aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Section 2699.3.”

16 76. Labor Code section 2699(f) provides: “For all provisions of this code except those for
17 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
18 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
19 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
20 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
21 each subsequent violation.”

22 77. Any allegations regarding violations of the IWC Wage Orders are enforceable as
23 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
24 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

25 78. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
26 penalties under the PAGA.

27 79. On or about **November 10, 2022**, Plaintiff paid the requisite PAGA filing fee and
28 provided written notice (by online electronic filing with the LWDA and by certified mail to

1 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
2 the alleged violations.

3 80. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
4 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
5 forth herein (the “PAGA notice”).

6 81. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
7 written PAGA notice from the LWDA.

8 82. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
9 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
10 providing a description of any actions taken to cure the alleged violations.

11 83. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
12 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
13 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
14 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

15 84. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
16 Complaint, Defendants committed the following violations and are liable for all corresponding civil
17 penalties:

- 18 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
19 1197, 1198; IWC Wage Orders.
- 20 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
21 Orders.
- 22 c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
23 1198; IWC Wage Orders.
- 24 d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
25 1198; IWC Wage Orders.
- 26 e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
27 §§ 204, 204b, 210.

- 1 f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
2 Labor Code §§ 201, 202, 203, 256.
- 3 g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- 4 h. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC
5 Wage Orders.

6 85. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
7 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants
8 pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the
9 extent permitted by law, including under Labor Code section 2699(g).

10 **PRAYER**

11 Plaintiff prays for judgment as follows:

- 12 a. For certification of this action as a class action;
- 13 b. For appointment of Plaintiff as the class representative;
- 14 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 15 d. For division of Class Members into appropriate classes and/or subclasses according to
16 proof;
- 17 e. For recovery of damages in amount according to proof;
- 18 f. For all recoverable pre- and post-judgment interest;
- 19 g. For recovery of all civil and statutory penalties and liquidated damages;
- 20 h. For disgorgement of all amounts wrongfully obtained;
- 21 i. For this action to be maintained as a representative action under the PAGA;
- 22 j. For Plaintiff and Plaintiff's counsel to be provided with all enforcement capability as
23 if the action were brought by the State of California or the California Division of Labor
24 Enforcement;
- 25 k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- 26 l. For restitution and injunctive relief;
- 27
- 28

- 1 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
3 1194, 2802, and Code of Civil Procedure section 1021.5; and
4 n. For such other relief the Court deems just and proper.

5
6 Dated: January 20, 2023

Ferraro Vega Employment Lawyers, Inc.

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8 Nicholas J. Ferraro

9 *Attorneys for Plaintiff Semira Trujillo*

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EXHIBIT 1
Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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ferrarovega.com

November 10, 2022

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

FFC San Diego, LLC
8100 E 22nd Street North, Bldg. 300-100
Wichita, KS 67226

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

KC Bell, Inc.
8100 E 22nd Street North, Bldg. 300-100
300-100 Wichita, KS 67226

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **SEMIRA TRUJILLO** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

FFC SAN DIEGO, LLC and KC BELL, INC.
dba FREDDY’S FROZEN CUSTARD AND STEAKBURGERS

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that

employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in a settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case be conducted in coordination with Plaintiff’s counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of ColdLine Team Member from about July 15, 2022 to September 13, 2022. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

First, Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages. Specifically, Defendants had a policy and practice of editing employees’ time records to reflect less hours worked on the time card, and avoid the payment of meal and rest period premiums (*i.e., timeshaving*). Due to this time shaving practice, all hours worked were not directly compensated, resulting in the minimum wage violations. Defendants engaged in a pattern of editing employee’s time records that resulted in an underpayment of regular wages to Plaintiff and the aggrieved employees. The revisions were made without employees’ knowledge or consent. Plaintiff and the aggrieved employees were deprived of regular wages each time Defendants altered their clock out time and overall time records, reducing the hours worked to make it appear as though they were not entitled to additional meal and/or rest periods or premium payments in their absence.

Second, Plaintiff and, on information and belief, other aggrieved employees were required to complete documents and training off the clock without pay. Plaintiff was required to complete approximately six hours of online training videos before she began her first shift for Defendants. Plaintiff was not compensated for this time and is informed and believes other aggrieved employees were required to complete documents and online trainings without pay. Plaintiff alleges that the training records, when compared to the time records showing what hours were compensated, for the aggrieved employees will reflect unpaid training hours in an amount to be proven at trial.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

On information and belief, Defendants failed to pay the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. To the extent Defendants’ timesaving practice (detailed above) resulted in unpaid overtime, Plaintiff brings this claim on behalf of the aggrieved employees.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858,

862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Defendants failed to provide compliant first and second meal periods to Plaintiff and the aggrieved employees. Plaintiff experienced missed, late, short, and interrupted meal periods due to high customer demand during “rushes” and staffing issues because of the high turnover within the company.

When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other aggrieved employees a meal period premium in violation of Labor Code section 226. The time records reflect shifts in excess of 5 and 6 hours without a corresponding 30-minute unpaid meal period or premium payment in lieu of such meal period.

Additionally, Plaintiff and on information and belief, other aggrieved employees were not subject to a meal period waiver agreement (and one has not been produced in Plaintiff’s personnel file). Even if such an agreement existed, an employee does not have the ability to waive their second meal period after their sixth hour of work under Labor Code section 512(a).

Plaintiff’s time records establish meal period liability on their face. This is apparent when Plaintiff worked over *five or six* hours and was not permitted to take a meal period. An illustrative example of these violations is found on Plaintiff’s time records coupled with Plaintiff’s wage statements which show a lack of meal period premium payments for the corresponding pay periods.

Employee Timecard								49-0001 National City - Mile of Cars Way (CA)					
9/6/2022 10:47:07 AM (UTC-08:00) Pacific Time (US & Canada)								6/1/2022 - 9/6/2022					
Employee Name				Payroll ID									
Trujillo, Semira				REDACTED									
Date	Job	Time In	Time Out	Regular	OT	Ext	Total Hrs	Paid Breaks	Unpaid Breaks	Rate	Total Pay	Non-Cash Tips	Declared Tips
07/17/22	Cashier	04:00 PM	10:13 PM	6.22	0.00	0.00	6.22	0.15	0.00	\$15.50	\$96.41	\$0.00	\$0.00
07/18/22	Cashier	04:24 PM	11:00 PM	6.00	0.00	0.00	6.00	0.00	0.80	\$15.50	\$93.00	\$0.00	\$0.00
07/19/22	Cashier	04:29 PM	10:37 PM	6.13	0.00	0.00	6.13	0.33	0.00	\$15.50	\$95.02	\$0.00	\$0.00
07/20/22	Cashier	04:00 PM	10:01 PM	5.55	0.00	0.00	5.55	0.08	0.47	\$15.50	\$86.03	\$0.00	\$0.00
07/20/22	Cashier	10:05 PM	10:31 PM	0.43	0.00	0.00	0.43	0.00	0.00	\$15.50	\$6.67	\$0.00	\$0.00
07/25/22	Cashier	04:01 PM	09:59 PM	5.97	0.00	0.00	5.97	0.23	0.00	\$15.50	\$92.54	\$0.00	\$0.00
07/26/22	Cashier	04:01 PM	09:33 PM	5.53	0.00	0.00	5.53	0.28	0.00	\$15.50	\$85.72	\$0.00	\$0.00
07/27/22	Cashier	04:18 PM	09:25 PM	5.12	0.00	0.00	5.12	0.25	0.00	\$15.50	\$79.36	\$0.00	\$0.00
08/01/22	Cashier	04:15 PM	09:45 PM	5.50	0.00	0.00	5.50	0.20	0.00	\$15.50	\$85.25	\$0.00	\$0.00
08/02/22	Cashier	04:55 PM	09:31 PM	4.60	0.00	0.00	4.60	0.25	0.00	\$15.50	\$71.30	\$0.00	\$0.00
08/15/22	Cashier	04:01 PM	10:22 PM	6.35	0.00	0.00	6.35	0.00	0.00	\$15.50	\$98.43	\$0.00	\$0.00
08/22/22	Cashier	04:45 PM	09:52 PM	5.12	0.00	0.00	5.12	0.00	0.00	\$15.50	\$79.36	\$0.00	\$0.00
08/24/22	Cashier	04:00 PM	06:19 PM	2.32	0.00	0.00	2.32	0.00	0.00	\$15.50	\$35.96	\$0.00	\$0.00
08/29/22	Cashier	04:14 PM	07:28 PM	3.23	0.00	0.00	3.23	0.00	0.00	\$15.50	\$50.07	\$0.00	\$0.00
09/05/22	Cashier	04:16 PM	08:55 PM	4.65	0.00	0.00	4.65	0.00	0.00	\$15.50	\$72.08	\$0.00	\$0.00
Totals:				72.72	0.00	0.00	72.72	1.77	1.07		\$1,127.20	\$0.00	\$0.00

Illustrative Time Records for Plaintiff – Showing Missed Meal Periods

During each pay period associated with the above timecard, Plaintiff worked shifts over five and six hours without a meal period or meal premium payment. The wage statements for these respective pay periods confirm no meal period premium was paid. On information and belief, Plaintiff alleges Defendants committed this same violation against other aggrieved employees as well as a matter of common payroll administration and company policy. Indeed, Plaintiff alleges Defendants maintained a policy and practice of failing to pay meal period premiums when due for late, short, or missed meal periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11

Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

For the reasons as set forth above in the meal period section, Plaintiff and other aggrieved employees were not authorized or permitted to take all their rest periods. Furthermore, Defendants had a policy and practice of not paying rest period premiums when due.

In this case, Defendants required employees to record their 10-minute rest periods. As such, Plaintiff’s time records establish rest period liability on their face. This is apparent when Plaintiff worked over four hours (or a major fraction thereof) and was not permitted to take *any* rest periods when she was entitled to a second 10 minute, uninterrupted and duty-free rest period after the sixth hour of work. An illustrative example of these violations is found on Plaintiff’s time records (where employees were required to track rest periods) coupled with Plaintiff’s wage statements showing a lack of rest period premium payments for the corresponding pay periods.

Employee Timecard										49-0001 National City - Mile of Cars Way (CA)			
9/6/2022 10:47:07 AM (UTC-08:00) Pacific Time (US & Canada)										6/1/2022 - 9/6/2022			
Employee Name		Payroll ID											
Trujillo, Semira		REDACTED											
Date	Job	Time In	Time Out	Regular	OT	Ext	Total Hrs	Paid Breaks	Unpaid Breaks	Rate	Total Pay	Non-Cash Tips	Declared Tips
07/17/22	Cashier	04:00 PM	10:13 PM	6.22	0.00	0.00	6.22	0.15	0.00	\$15.50	\$96.41	\$0.00	\$0.00
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07/19/22	Cashier	04:29 PM	10:37 PM	6.13	0.00	0.00	6.13	0.33	0.00	\$15.50	\$95.02	\$0.00	\$0.00
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07/25/22	Cashier	04:01 PM	09:59 PM	5.97	0.00	0.00	5.97	0.23	0.00	\$15.50	\$92.54	\$0.00	\$0.00
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08/22/22	Cashier	04:45 PM	09:52 PM	5.12	0.00	0.00	5.12	0.00	0.00	\$15.50	\$79.36	\$0.00	\$0.00
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08/29/22	Cashier	04:14 PM	07:28 PM	3.23	0.00	0.00	3.23	0.00	0.00	\$15.50	\$50.07	\$0.00	\$0.00
09/05/22	Cashier	04:16 PM	08:55 PM	4.65	0.00	0.00	4.65	0.00	0.00	\$15.50	\$72.08	\$0.00	\$0.00
Totals:				72.72	0.00	0.00	72.72	1.77	1.07		\$1,127.20	\$0.00	\$0.00

Plaintiff’s Time Records – Showing Missed Rest Periods

During each pay period, Plaintiff worked shifts over three and one-half and over six hours with missed, short, and interrupted first and/or second rest periods. This is reflected in the paid breaks column of aggrieved employee pay stubs. On such occasion, Defendants failed

to pay a rest period premium despite the non-compliant breaks. On information and belief, Defendants committed this same violation against other aggrieved employees as well as a matter of common payroll administration and company policy.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without

providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Specifically, because Defendants failed to pay wages for all hours worked and all meal and rest period premiums owed, as alleged herein, Defendants failed to pay those premium payments each pay period or upon separation of employment, rendering the payments untimely and subject to civil penalties for the violations committed against the aggrieved employees.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements **Violation of Labor Code §§ 226, 226.3**

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid by Defendants, resulting in an inaccurate reflection and recording of gross and net wages earned on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and

premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the wage statement.

Defendants also violated section 226(a)(2) by not accurately listing the total hours worked on the wage statement. This was due to Defendants' policy and practice of editing and reducing hours worked (*i.e.*, timeshaving) on employees' time records, as described above.

Moreover, the wage statements provided by Defendants to Plaintiff in response to her statutory records request reflect wage statements that do not show the name and address of the legal employer in violation of Labor Code section 226(a)(8). These wage statements are also missing the hourly rates, in violation of Labor Code section 226(a)(9). On information and belief, Defendants issued wage statements with the same type of violations to the aggrieved employees.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.


If you have any questions regarding the scope your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,


Nicholas J. Ferraro

Cc Plaintiff Semira Trujillo
Lauren N. Vega, Esq. – Lauren@ferrerovega.com
Craig D. Nickerson, Esq. – CNickerson@grsm.com