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10 Attorneys for Plaintiff JOSE GUTIERREZ

11 **IN THE SUPERIOR COURT OF STATE OF CALIFORNIA**  
12 **FOR ORANGE COUNTY**

13 JOSE GUTIERREZ,

14 Plaintiff

15 v.

16 CANNERY SEAFOOD OF THE PACIFIC  
17 LLC; and DOES 1 through 50, inclusive,

18 Defendants.

Case No.:

**FIRST AMENDED PRIVATE  
ATTORNEYS GENERAL ACT  
COMPLAINT**

1. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code, § 226.7, 512);
2. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code, § 226.7, 512);
3. Violation of PAGA for Failure to Pay All Wages Including Minimum Wages and Overtime Wages (Lab. Code, § 510, 1194);
4. Violation of PAGA for Failure to Keep Accurate Payroll Records (Lab. Code, § 1174, 226, subd. (A), (E));
5. Violation of PAGA for Failure to Reimburse for Necessary Expenditures (Lab. Code, § 2802); and
6. Violation of PAGA for Waiting Time Penalties (Lab. Code, § 201, 202, 203).

**DEMAND FOR JURY TRIAL**

1 Plaintiff JOSE GUTIERREZ (“Plaintiff” or “Mr. Gutierrez”) complains and alleges as  
2 follows:

3 **PRELIMINARY STATEMENT**

4 1. This case arises out of the violation of numerous Labor Code provisions by  
5 CANNERY SEAFOOD OF THE PACIFIC, LLC (“CSP” or “Defendant”), a California  
6 corporation owning a restaurant located in Newport Beach, California. Plaintiff and similarly-  
7 aggrieved employees seek civil penalties from Defendant for violations of numerous Labor  
8 Code provisions, including, but not limited to, sections 201, 202, 203, 226, 226.7, 510, 512,  
9 1194, and 2802. Plaintiff alleges that Defendant failed to provide meal periods, failed to provide  
10 rest periods, failed to pay overtime wages, failed to reimburse employees for business-related  
11 expenses, failed to keep accurate payroll records, and failed to pay waiting time penalties as set  
12 forth more fully herein. These violations concern current and past employees of CSP.

13 **JURISDICTION AND VENUE**

14 2. Venue is proper in Orange County, because the Defendant maintains its location  
15 and transacts business in this county, the obligations and liability primarily arise in this county,  
16 and worked was primarily performed by Plaintiff and similarly-aggrieved employees in Orange  
17 County.

18 3. The California Superior Court has jurisdiction in the matter because the  
19 individual claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional  
20 threshold for federal court and, upon information and belief, Plaintiff and Defendant are  
21 residents of and/or domiciled in the State of California. Further, there is no federal question at  
22 issue as the issues herein is based solely on California Statutes and law, including the Labor  
23 Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rule of Court,  
24 and Business and Professions Code.

25 **THE PARTIES**

26 **Plaintiff**

27 4. Individual and Representative Plaintiff JOSE GUTIERREZ is an individual  
28 residing in Orange County.

1           5.       Plaintiff was employed by Defendant as a chef from approximately 2001 through  
2 February 20, 2019.

3                   **Defendant**

4           6.       Plaintiff is informed and believes, and based thereon alleges, that CSP is a  
5 California corporation organized under the laws of the State of California and is and/or was  
6 Plaintiff and similarly-aggrieved employees' employer during the Relevant Time Period, herein  
7 defined as the period of one year preceding the filing of this complaint.

8           7.       Plaintiff is ignorant of the true names, capacities, relationships, and extent of  
9 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,  
10 inclusive, but on information and belief allege that said Defendants are legally responsible for  
11 the occurrences alleged herein, and that the damages of Plaintiff and similarly-aggrieved  
12 employees were proximately caused by such Defendants. Plaintiff will amend this complaint to  
13 allege the true names and capacities of the DOE Defendants when ascertained.

14           8.       Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
15 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or  
16 joint venture of the remaining Defendants and was acting within the course and scope of the  
17 relationship. Plaintiff is further informed and believes, based thereon alleges, that each of the  
18 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the  
19 remaining Defendants.

20           9.       Plaintiff is further informed and believes, and based thereon alleges, that  
21 Defendants herein acted as a "single employer" at all relevant times. At all relevant times,  
22 Defendants managed stucco and plastering work across the state of California. Defendants acted  
23 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant  
25 are legally attributable to the other Defendants.

26                                   **ADMINISTRATIVE PREREQUISITE**

27           10.       By this complaint, Plaintiff brings this case as a representative action seeking  
28 penalties for the State of California in a representative capacity, as provided by the Private

1 Attorneys' General Act ("PAGA"), Labor Code sections 2698 et seq., to the extent permitted by  
2 law, as an aggrieved employee who was employed by Defendant and subject to alleged  
3 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in  
4 his/her notice to the Labor Workforce Development Agency ("LWDA") and the employer:  
5 violation of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802.

6 11. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause  
7 of action under PAGA only after giving the Labor Workforce Development Agency ("LWDA")  
8 and the employer notice of the Labor Code sections alleged to have been violated, and after  
9 receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed  
10 without notice from the LWDA.

11 12. On May 13, 2019, prior to the filing of this complaint, Plaintiff gave written  
12 notice of the specific provisions alleged to have been violated, including the facts and theories  
13 to support the alleged violations, as required by Labor Code section 2699.3. The written notice  
14 was given via certified mail to Defendant(s), and the LWDA by electronically filing the notice  
15 via the Department of Industrial Relations website. Plaintiff was given an LWDA case number  
16 of LWDA-CM-693808-19. A true and correct copy of Plaintiff's notice to the LWDA and  
17 Defendant(s), dated May 13, 2019, is attached hereto as Exhibit A.

#### 18 **GENERAL ALLEGATIONS**

19 13. Labor Code section 1194 provides that notwithstanding any agreement to work  
20 for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to  
21 recover in a civil action the unpaid balance of their overtime compensation, including interest  
22 thereon, reasonable attorneys' fees and costs of suit.

23 14. During all or a portion of the Relevant Time Period, Plaintiff and similarly-  
24 aggrieved employees were employed by Defendant in the State of California. Plaintiff and  
25 similarly-aggrieved employees were non-exempt employees covered under one (1) or more  
26 Industrial Welfare Commission ("IWC") Wage Orders, and Labor Code section 510, and/or  
27 other applicable wage orders, regulations and statutes, and were not subject to an exemption for  
28 executive, administrative and professional employees, which imposed obligations on the part of

1 Defendant to pay Plaintiff and similarly-aggrieved employees lawful overtime compensation.  
2 Plaintiff and similarly-aggrieved employees were covered by one (1) or more IWC Wage  
3 Orders, and Labor Code section 226.7 and other applicable Wage Orders, regulations, and  
4 statutes which imposed an obligation on the part of the Defendant to pay Plaintiff and similarly-  
5 aggrieved employees rest and meal period compensation.

6 15. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and  
7 similarly-aggrieved employees overtime compensation for all hours worked over eight (8) hours  
8 of work in one (1) day or forty (40) hours in one (1) week.

9 16. During the Relevant Time Period, Defendant was obligated to provide Plaintiff  
10 and similarly-aggrieved employees with a work free meal and/or rest period.

11 17. Plaintiff and similarly-aggrieved employees primarily performed non-exempt  
12 work in excess of the maximum regular rate hours set by the IWC in the applicable Wage  
13 Orders, regulations or statutes, and therefore entitled Plaintiff and similarly-aggrieved  
14 employees to overtime compensation at time and a half rate, and when applicable, double-time  
15 rates as set forth by the applicable Wage Orders, regulations and/or statutes.

16 18. Plaintiff and similarly-aggrieved employees were not paid the above due  
17 overtime compensation timely upon the termination of their employment as required by Labor  
18 Code sections 201, 202, and 203, and are entitled to penalties as provided by PAGA.

19 19. During the Relevant Time Period, Defendant required Plaintiff and similarly-  
20 aggrieved employees to work overtime without lawful compensation, in violation of the various  
21 applicable Wage Orders, regulations, and statutes, and Defendant: (1) Willfully failed and  
22 refused, and continue to fail and refuse to pay lawful overtime compensation to Plaintiff and  
23 similarly-aggrieved employees; and (2) willfully failed and refused, and continue to fail and  
24 refuse to pay due and owing wages promptly upon termination of employment to Plaintiff and  
25 similarly-aggrieved employees.

26 20. During the Relevant Time Period, Defendant failed and/or refused to schedule  
27 Plaintiff and similarly-aggrieved employees in an overlapping manner so as to reasonably  
28 ensure meal and/or rest breaks and/or shift relief for Plaintiff and similarly-aggrieved

1 employees, thereby causing Plaintiff and similarly-aggrieved employees to work without being  
2 given paid ten (10) minute rest periods for every four (4) hours or major fraction thereof worked  
3 and without being given a thirty (30) minute meal period for shifts of at least five (5) hours and  
4 second thirty (30) minute meal periods for shifts of at least ten (10) hours during which Plaintiff  
5 and similarly-aggrieved employees were relieved of all duties and free to leave the premises.  
6 Defendant further failed and/or refused to schedule Plaintiff and similarly-aggrieved employees  
7 in a manner so as to reasonably ensure meal and/or rest breaks were taken within the required  
8 statutory time frame and uninterrupted as required by law. Furthermore, Defendant failed and/or  
9 refused to pay Plaintiff and similarly-aggrieved employees one (1) hour's pay at the employees'  
10 regular rate of pay as premium compensation for failure to provide rest and/or meal periods or  
11 to providing such rest and/or meal periods within the statutory time frame as a result of their  
12 scheduling policy.

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**  
15 **PROVIDE MEAL PERIODS**

16 **(Lab. Code, § 226.7 and 512)**

17 **(Plaintiff against Defendant)**

18 21. Plaintiff realleges and incorporates by reference the allegations in the preceding  
19 paragraphs.

20 22. Labor Code sections 226.7 and 512 provide that no employer shall employ any  
21 person for a work period of more than five (5) hours without providing a meal period of not less  
22 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours  
23 without a second meal period of not less than thirty (30) minutes.

24 23. Labor Code section 226.7 provides that if an employer fails to provide an  
25 employee a meal period in accordance with this section, the employer shall pay the employee  
26 one (1) hour of pay at the employee's regular rate of compensation for each workday that the  
27 meal period is not provided in accordance with this section.







1 day and forty (40) hours per week for work performed for the Defendant as a result of being  
2 subjected to Defendant's unlawful rounding scheme. Defendant rounded the wages of all  
3 employees to the nearest fifteen (15) minute interval. Plaintiff alleges on information and belief  
4 that Defendant's rounding policy on average favored Defendant, and therefore resulted in lost  
5 wages for Plaintiff and similarly-aggrieved employees.

6 38. To the extent that such unpaid wages were for hours worked in excess of eight  
7 (8) in one day or forty (40) in one week, such wages were required to be paid at an overtime rate  
8 of one-and-a-half times each employee's base rate of pay.

9 39. By virtue of Defendant's unlawful failure to provide all wages owed to Plaintiff  
10 and similarly-aggrieved employees, Plaintiff and similarly-aggrieved employees have suffered,  
11 and will continue to suffer, damages in amounts which are presently unknown, but will be  
12 ascertained according to proof at trial.

13 40. Plaintiff and similarly-aggrieved employees request recovery of civil penalties  
14 pursuant to Labor Code section 226.7, which they are owed beginning one (1) year prior to  
15 filing this complaint, in a sum as provided by the Labor Code and/or any other statute.

16 41. Additionally, Plaintiff is entitled to attorneys' fees, costs, pursuant to Labor Code  
17 section 1194 and prejudgment interest.

18 **FOURTH CLAIM FOR RELIEF**

19 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**  
20 **KEEP ACCURATE PAYROLL RECORDS**

21 **(Lab. Code, § 1174, 226, subd. (a), (e))**

22 **(Plaintiff against Defendant)**

23 42. Plaintiff realleges and incorporates by reference the allegations in the preceding  
24 paragraphs.

25 43. Labor Code section 1174, subdivision (d), requires an employer to keep at a  
26 central location in California or at the plant or establishment at which the employees are  
27 employed, payroll records showing the hours worked daily, and the wages paid to each  
28 employee. Plaintiff is informed and believes, based thereon alleges, that Defendant willfully

1 failed to make or keep accurate records for Plaintiff and similarly-aggrieved employees.

2 44. Labor Code section 226, subdivision (a), requires employers to furnish each  
3 employee with a statement that accurately reflects the total number of hours worked and  
4 applicable hourly overtime rates in effect during the pay period at the time of each payment of  
5 wages or semi-monthly. Labor Code section 226, subdivision (e), provides that if an employer  
6 knowingly and intentionally fails to provide a statement itemizing, *inter alia*, the total hours  
7 worked by the employee and the applicable hourly overtime rates, causing the employee injury,  
8 then the employee is entitled to recover the greater of all actual damages or fifty dollars  
9 (\$50.00) for each subsequent violation, up to four thousand dollars (\$4,000.00).

10 45. IWC Wage Order No.16-2001, paragraph 6(A) requires that every employer  
11 shall keep accurate information with respect to each employee, including time records showing  
12 when each employee begins and ends each work period, the total daily hours worked by each  
13 employee and the total hours worked in each payroll period, and applicable rates of pay.  
14 Plaintiff is informed and believes that Defendant willfully and intentionally failed to make  
15 and/or keep records which accurately reflect the hours worked by Plaintiff and similarly-  
16 aggrieved employees. Specifically, Plaintiff believes that Defendant's records do not accurately  
17 reflect where Plaintiff and similarly-aggrieved employees worked during their meal and/or rest  
18 breaks due to Defendant's failure to schedule Plaintiff and similarly-aggrieved employees in an  
19 overlapping manner so as to provide them with a meal and/or rest break.

20 46. Plaintiff is informed and believes, and based thereon alleges, that Defendant's  
21 failure to keep accurate payroll records, as described above, violated Labor Code section 1174,  
22 subdivision (d), and the applicable wage order. Plaintiff and similarly-aggrieved employees are  
23 entitled to penalties of one hundred dollars (\$100.00) for the initial violation and two hundred  
24 dollars (\$200.00) for each subsequent violation for every pay period during which these records  
25 and information were not kept by Defendant.

26 47. Plaintiff is informed and believes, and based thereon alleges, that Defendant's  
27 failure to keep and maintain accurate records and information, as described above, was willful,  
28 and Plaintiff and similarly-aggrieved employees are entitled to a civil penalty of five hundred

1 dollars (\$500.00) per employee pursuant to Labor Code section 1174.5.

2 48. Defendant knowingly and intentionally failed to, and continues to fail to, furnish  
3 Plaintiff and similarly-aggrieved employees with timely, itemized statements that accurately  
4 reflect the total number of hours worked, as required by Labor Code section 226, subdivision  
5 (2), and Plaintiff and similarly-aggrieved employees suffered injury as a result. Consequently,  
6 Defendant is liable to Plaintiff and similarly-aggrieved employees for the amounts provided by  
7 Labor Code section 226, subdivision (e).

8 49. Plaintiff has complied with the reporting requirements under Labor Code  
9 sections 2698-2699, individually and on behalf of all aggrieved employees. Plaintiff requests  
10 and is entitled to recover from Defendant's penalties for failure to keep accurate payroll records,  
11 interest, attorney's fees and costs pursuant to Labor Code section 1174, as well as all statutory  
12 penalties and attorneys' fees against Defendant.

13 **FIFTH CLAIM FOR RELIEF**

14 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**  
15 **REIMBURSE FOR NECESSARY EXPENDITURES**

16 **(Lab. Code, § 2802)**

17 **(Plaintiff against Defendant)**

18 50. Plaintiff realleges and incorporates by reference the allegations in the preceding  
19 paragraphs.

20 51. Labor Code section 2802 states that "An employer shall indemnify his or her  
21 employee for all necessary expenditures or losses incurred by the employee in direct  
22 consequence of the discharge of his or her duties...."

23 52. Plaintiff and similarly-aggrieved employees were not reimbursed by Defendant  
24 for necessary expenditures as a direct consequence of the discharge of their duties.

25 53. Defendant knowingly, willingly, and intentionally attempted to offset the cost of  
26 doing business on Plaintiff and similarly-aggrieved employees.

27 54. Defendant had a corporate practice and policy of requiring Plaintiff and  
28 similarly-aggrieved employees to shoulder the burden of Defendant's cost of doing business by

1 failing to reimburse Plaintiff and similarly-aggrieved employees for necessary business  
2 expenditures, specifically the cost of utilizing cell phones to communicate with other  
3 employees, including Defendant's agents.

4 55. Accordingly, Plaintiff and similarly-aggrieved employees are entitled to civil  
5 penalties in accordance with PAGA, which shall also include all reasonable costs, including, but  
6 not limited to, attorneys' fees and interest.

7 **SIXTH CLAIM FOR RELIEF**

8 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**  
9 **PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

10 **(Lab. Code, § 201, 202, 203)**

11 **(Plaintiff against Defendant)**

12 67. Plaintiff realleges and incorporates by reference the allegations in the preceding  
13 paragraphs.

14 68. Plaintiff and similarly-aggrieved employees were entitled to be promptly paid  
15 lawful overtime compensation, reimbursement for all necessary business expenditures, and all  
16 premiums owed as meal and rest penalties, as required by Labor Code sections 201, 202, and  
17 203, upon the termination of their employment with Defendant. Defendant refused and/or failed  
18 to promptly compensate Plaintiff and similarly-aggrieved employees all wages owed as a result  
19 of the above violations. Plaintiff seeks the payment of civil penalties pursuant to PAGA, and  
20 according to proof.

21 69. Plaintiff also seeks attorneys' fees, costs, and prejudgment interest pursuant to  
22 Labor Code section 203.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff prays for the following relief:

- 25 1. For penalties in an amount according to proof;  
26 2. For reasonable attorney's fees and costs, pursuant to the PAGA; and

27 ///

28 ///



1 **DEMAND FOR JURY TRIAL**

2 Plaintiff JOSE GUTIERREZ hereby demands a jury trial on all issues so triable.

3  
4 Dated: October 28, 2019

**MAHONEY LAW GROUP, APC**

5  
6 By: /s/ Joshua D. Klein  
7 Joshua D. Klein, Esq.  
8 Attorney for Plaintiff JOSE GUTIERREZ  
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# **EXHIBIT A**



Joshua D. Klein  
(562) 590-5550 phone  
(562) 590-8400 facsimile  
jklein@mahoney-law.net

May 13, 2019

**Via Certified Electronic Mail #7016 1370 0000 2461 5535**  
LABOR AND WORKFORCE DEVELOPMENT AGENCY  
[PAGAfilings@dir.ca.gov](mailto:PAGAfilings@dir.ca.gov)

**VIA U.S. MAIL & CERTIFIED MAIL**

***Return Receipt Requested***

ATTN: Brandon L. Sylvia  
Rutan & Tucker, LLP  
611 Anton Blvd., Ste. 1400  
Costa Mesa, CA 92626

***Re: Jose Gutierrez v. Cannery Seafood of the Pacific LLC***

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

To: California Labor and Workforce Development Agency, AutoZone, Inc.  
From: Jose Gutierrez, on behalf of herself and all other aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

**Factual Statement**

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Jose Gutierrez ("Plaintiff" or "Mr. Gutierrez"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of himself and all other aggrieved employees.

**Theories of Labor Code Violations and Remedies**

Cannery Seafood of the Pacific LLC ("Defendant") is a corporation headquartered in Newport Beach, CA. Mr. Gutierrez worked as a chef for Defendant from sometime in 2001 through on or around February 20, 2019. Mr. Gutierrez was paid an hourly wage and worked as a non-exempt employee, thereby entitling him to all applicable benefits conferred by the Labor Code.

Mr. Gutierrez alleges Defendant violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802, by failing to provide him and all other aggrieved employees all wages for all hours worked, including minimum wage and overtime



hours, failing to provide all meal and rest periods or premium compensation in lieu thereof, failure to reimburse employees for all necessary expenses incurred in carrying out their job duties, failure to pay all wages due at termination, and failing to provide accurate wage statements. Mr. Gutierrez and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Defendant in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Defendant failed to pay Mr. Gutierrez and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Mr. Gutierrez's paystubs indicate that all regular and overtime hours worked were rounded to fifteen-minute intervals. An employer's rounding policy is only permissible if, over a period of time, the policy is neutrally-applied and does not favor the employer. (*See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889.) Mr. Gutierrez alleges on information and belief that Defendant's rounding policy on average favored Defendant, and thereby caused him to receive reduced wages than he actually worked. Further, to the extent such unpaid wages were for hours worked in excess of eight (8) in one day or forty (40) in one week, such wages were required to be paid at an overtime rate of one-and-a-half times (1.5x) each employee's base rate of pay. Defendant's failure to compensate Mr. Gutierrez and other aggrieved employees for all owed minimum and overtime wages is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

Defendant also failed to provide Mr. Gutierrez and other aggrieved employees with meal and rest periods in accordance with California law. Due to Defendant's policy and practices, Mr. Gutierrez alleges that Defendant never provided him nor other aggrieved employees the opportunity to take any rest breaks. Furthermore, Mr. Gutierrez and other aggrieved employees were not always provided the opportunity to make meal breaks. Despite being a chef, Mr. Gutierrez was required to sign an "On-Duty Meal Agreement", thereby waiving his right to take duty-free meal periods. On-duty meal periods are permitted by the IWC Wage Orders "only when the nature of the work prevents an employee from being relieved of all duty..." (IWC Wage Order 5, 8 CCR § 11050.) Although "California state courts have not addressed the substantive scope of the 'nature of the work' exception" (*Abdullah v US Sec. Associates, Inc.* (2013) 731 F.3d 952, 958.), the Division of Labor Standards Enforcement has provided guidance, including that the work should "some particular, external force that requires the employee to be on duty at all times" and "the employee is the sole employee of a particular employer." (DLSE Opinion Letter 2009.06.09 at 7.) The employer has the burden of establishing fact to justify requiring an on-duty meal period. (DLSE Opinion Letter 2002.09.04 at 2.) Mr. Gutierrez alleges that the circumstances of his work as a chef were insufficient to warrant requiring on-duty meal periods.

Pertinently, Defendant did not compensate Mr. Gutierrez and other aggrieved employees with premium pay for every meal period and rest period that was not provided or interrupted. Defendant's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

By failing to include on the paystubs of Mr. Gutierrez and other aggrieved employees time for work lost through Defendant's rounding, as well as rest and meal break premium wages,

Defendant failed to keep accurate payroll records and failed to provide Mr. Gutierrez and other aggrieved employees with complete and accurate wage statements. Defendant's conduct is actionable under PAGA as a violation of Labor Code section 226.

As a further result of Defendant's failure to pay all wages owed as described herein and throughout their employment, Defendant also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned and due to former employees at the time their employment ended.

Further, Mr. Gutierrez alleges that Defendant failed to compensate him and other aggrieved employees for all necessary business expenditures the incurred. Defendant required Mr. Gutierrez and other aggrieved employees to utilize their personal cell phones for business purposes such as communicating with other employees and supervisors, and did not provide an alternative means of communication. However, Defendant failed to reimburse or indemnify its employees for the above necessary business expenditures. Defendant's conduct is actionable under PAGA as a violation of Labor Code section 2802.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Gutierrez becomes aware of additional compensation owed or losses incurred by Mr. Gutierrez or by any other aggrieved employee of the Defendant, Mr. Gutierrez expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

### **RIGHT TO CURE/DEMAND**

NOTICE is hereby given to Defendant that the employer may cure the alleged violations within 33 calendar days of the postmark date of this notice. If the Defendant cures the violations, the employer shall give written notice within the 33 calendar days indicated above by certified mail to Mr. Gutierrez's attorney and by online filing with the agency as set forth in Labor Code section 2699.3(c)(2). In order to cure these violations, the following demands are made:

1. Defendant agrees to pay to Mr. Gutierrez and to all other non-exempt employees who worked for Defendant in California within the past 12 months all meal and rest period premium pay for each day meal and/or rest period was not taken, maximum of 2 hours of premium pay per workday.

2. Defendant shall agree to reimburse Mr. Gutierrez and aggrieved employees who were required to incur any business expenses for the benefit of Defendant, including but not limited to the cost of tools used for the benefit of Defendant.

3. Defendant shall agree to pay Mr. Gutierrez and to all other non-exempt employees who worked for Defendant in California within the past 12 months all wages owed but not compensated, and all overtime pay owed but not compensated.

May 13, 2019

Page 4 of 4

4. Defendant shall pay to each formerly employed aggrieved employee a waiting time penalty of one day's pay at the employee's regularly rate of pay for up to thirty (30) days for Defendant's failure to pay all wages earned and due upon separation of employment.

5. Defendant shall agree to pay accrued interest to Mr. Gutierrez and all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid wages.

6. Defendant shall re-issue corrected itemized wage statements to Mr. Gutierrez and all aggrieved employees for the 12-month period prior to the date of this notice.

If Defendant wants clarification of any of the alleged violations or facts and theories upon which they are based at this time, Defendant is invited to contact Mr. Gutierrez's counsel. Otherwise, Mr. Gutierrez will presume Defendant fully understands the allegations contained herein.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC  
Joshua D. Klein  
249 E. Ocean Blvd., Suite 814  
Long Beach, CA 90802  
Tel: (562) 590-5550  
Email: [jklein@mahoney-law.net](mailto:jklein@mahoney-law.net)

Sincerely,



Joshua D. Klein, Esq.

**MAHONEY LAW GROUP, APC**

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**PROOF OF SERVICE**

Code of Civ. Proc. § 1013a, subd. (3)

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802.


On **October 28, 2019**, I served [X] true copies [ ] originals of the following document described as: **FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT COMPLAINT**. The document was served on the interested parties in this action, addressed as follows:

Brandon L. Sylvia, Esq. <b>Rutan &amp; Tucker, LLP</b> 611 Anton Blvd., 14th Floor Costa Mesa, CA 92626	Attorney for Defendant CANNERY SEAFOOD of the PACIFIC, LLC  Telephone: (714) 641-5100 Email: bsylvia@rutan.com
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**By United States Mail:** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the addresses above. I then placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Long Beach, CA.

**(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **October 28, 2019**, at Long Beach, California.

  
Wendy Ramirez