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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

VALENTIN LOPEZ, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

NORTHERN CAFE; JIANG & YAN
CORPORATION, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV04625

By Fax

Assigned for All Purposes to:

Hon. Ann I. Jones

Dept. 11

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods or
Compensation in Lieu Thereof;
4. Failure to Permit Rest Periods or Provide
Compensation in Lieu Thereof;
5. Failure to Provide Accurate Itemized
Wage Statements;
6. Waiting Time Penalties;
7. Violation of the Unfair Competition Law;
and
8. Enforcement of the Private Attorneys
General Act of 2004.

DEMAND FOR JURY TRIAL

1 Per the Court's July 20, 2020 Order allowing Plaintiff to file a First Amended Complaint to
2 add a Private Attorneys General Act of 2004 ("PAGA") cause of action, Plaintiff VALENTIN LOPEZ
3 ("Plaintiff"), individually, and on behalf of all others similarly situated, brings this First Amended
4 Class and Representative Action Complaint ("FAC") against Defendants NORTHERN CAFE, JIANG
5 & YAN CORPORATION, a California corporation, and DOES 1 through 50, inclusive (collectively,
6 "Defendants"), and alleges as follows:

7 **INTRODUCTION**

8 1. Plaintiff brings this putative class action pursuant to Code of Civil Procedure section
9 382 against Defendants, on behalf of himself individually and a putative class of California citizens
10 who are and were employed by Defendants as non-exempt employees throughout California during
11 the Class Period (collectively the "Class" or "Class Members"). The term Class Period is defined as
12 four years prior to the filing of this action to the date of class certification.

13 2. Plaintiff also brings this representative action pursuant to the PAGA, Labor Code
14 sections 2698 *et seq.*, against Defendants, on behalf of himself individually and other aggrieved
15 employees who are and were employed by Defendants as non-exempt employees throughout
16 California during the PAGA Period. The term PAGA Period is defined as one year prior to Plaintiff's
17 notice of Labor Code violations to the Labor and Workforce Development Agency ("LWDA") and
18 Defendants until judgment.

19 3. Defendants own and operate restaurants and do business as Northern Cafe throughout
20 California.

21 4. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour
22 violations under the Labor Code, the Industrial Welfare Commission ("IWC") Wage Orders, and
23 Business and Professions Code that have damaged Plaintiff and Class Members, and contribute to
24 Defendants' deliberate unfair competition.

25 5. Plaintiff is informed and believes, and thereon alleges, that Defendants have violated
26 and continue to violate state wage and hour laws by, among other things:

- 27 (a) failing to pay all wages (including minimum, regular, overtime, and double time
28 wages);

- 1 (b) failing to provide lawful meal periods or compensation in lieu thereof;
2 (c) failing to authorize or permit rest breaks or provide compensation in lieu thereof;
3 (d) failing to provide accurate itemized wage statements; and
4 (e) failing to pay all wages due upon separation of employment.

5 6. Plaintiff seeks monetary relief against Defendants on behalf of himself and the putative
6 class to recover, among other things, unpaid wages, liquidated damages, restitution, interest, attorneys'
7 fees, costs, and penalties pursuant to Labor Code sections 201-204, 206, 210, 226, 226.7, 510, 512,
8 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699(g)(1) and Code of Civil
9 Procedure section 1021.5.

10 **JURISDICTION AND VENUE**

11 7. This is a class action pursuant to Code of Civil Procedure section 382 and
12 representative action pursuant to Labor Code sections 2698 *et. seq.* ("PAGA"). The monetary
13 damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal
14 jurisdictional limits of the Superior Court and will be established according to proof at trial.

15 8. This Court has jurisdiction over this action pursuant to the California Constitution,
16 Article VI, section 10, which grants the Superior Court original jurisdiction in all causes, except those
17 given by statutes to other courts. The statutes under which this action is brought do not specify any
18 other basis for jurisdiction. All claims alleged herein arise under California law for which Plaintiff
19 seeks relief authorized by California law.

20 9. This Court has jurisdiction over all Defendants because, upon information and belief,
21 they have sufficient minimum contacts in California, or otherwise intentionally avail themselves of
22 the California market so as to render the exercise of jurisdiction over them by the California courts
23 consistent with traditional notions of fair play and substantial justice.

24 10. Venue is proper in this Court under Code of Civil Procedure sections 395(a) and 395.5
25 because, upon information and belief, Defendants reside, transact business, maintain offices, and/or
26 have an agent or agents in this county, and the acts and omissions alleged herein took place in this
27 county.

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PARTIES

11. Plaintiff is a California citizen and resides in Los Angeles County, California. Defendants employed Plaintiff as a non-exempt employee during the Class Period. Plaintiff is a former employee of Defendants and was employed within one year prior to the filing of this action.

12. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant NORTHERN CAFE is an unknown entity doing business in the State of California with its principal place of business in Los Angeles County. Plaintiff is informed and believes, and thereon alleges that Defendant NORTHERN CAFE operates Chinese restaurants within California. Plaintiff is informed and believes, and thereon alleges that Defendant NORTHERN CAFE regularly conducts business within the State of California and derives substantial revenues from services performed in California.

13. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant JIANG & YAN CORPORATION was and is a California corporation with its principal executive office located in Los Angeles County. Plaintiff is informed and believes, and thereon alleges that Defendant JIANG & YAN CORPORATION operates Chinese restaurants within California. Defendant JIANG & YAN CORPORATION regularly conducts business within the State of California and derives substantial revenues from services performed in California.

14. Plaintiff is informed and believes, and thereon alleges that at all relevant times, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose non-exempt employees were and are engaged throughout this county and the State of California.

15. Defendant DOES 1 through 50, are sued under fictitious names pursuant to Code of Civil Procedure section 474 because Plaintiff does not know their true names or capacities. Plaintiff will seek leave of court to amend this FAC and serve such fictitiously named Defendants when their names and capacities are ascertained.

16. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 50 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

17. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business

1 plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable
2 to the other Defendants.

3 18. Plaintiff is informed and believes, and thereon alleges, that each Defendant directly or
4 indirectly, through agents or other persons or entities, employed or otherwise exercised control over
5 the wages, hours, and working conditions of Plaintiff and the Class Members. Furthermore, each
6 Defendant in all respects acted as the employer and/or joint employer of Plaintiff and the Class
7 Members.

8 19. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
9 omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through
10 50, acting as the agent, alter ego, agent, servant, joint venturer, co-conspirator, and/or partner for the
11 other, within a common enterprise and legal authority to act on the other's behalf. The acts of any and
12 all Defendants were in accordance with, and represent, the official policy of Defendants.

13 20. At all relevant times, Defendants, and each of them, acted within the scope of such
14 agency or employment, or ratified each and every act or omission complained of herein. At all relevant
15 times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other
16 Defendants in proximately causing the damages herein alleged.

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

20 **CLASS ALLEGATIONS**

21 22. Plaintiff brings this class action pursuant to Code of Civil Procedure section 382 on
22 behalf of himself and all others similarly situated who were injured by Defendants' violations of the
23 Labor Code, Business and Professions Code sections 17200, *et seq.*, and IWC Wage Orders during
24 the Class Period.

25 23. Plaintiff's proposed Class consists of and is defined as follows:

26 Class

27 All California citizens currently or formerly employed by Defendants as non-exempt
28 employees in the State of California within four years prior to the filing of this action

1 to the date of class certification.

2 24. Plaintiff also seeks to certify the following Subclass:

3 Waiting Time Subclass

4 All Class Members who separated from their employment with Defendants at any time
5 within three years prior to the filing of this action to the date of class certification
6 (“Subclass” or “Waiting Time Subclass”).

7 25. Members of the Class and Subclass described above will be collectively referred to as
8 “Class Members.”

9 26. Plaintiff reserves the right to modify or re-define the Class or Subclass, establish
10 additional subclasses, or modify or re-define any class or subclass definition as appropriate based on
11 investigation, discovery, and specific theories of liability.

12 27. There is a well-defined community of interest in this litigation and the proposed Class
13 and Subclass are readily ascertainable.

14 28. **Commonality:** This action has been brought and may properly be maintained as a class
15 action under the Code of Civil Procedure section 382 because there are common questions of law and
16 fact as to the Class Members that predominate over any questions affecting only individual members
17 including, but not limited to, the following:

- 18 (a) Whether Defendants paid Plaintiff and Class Members all wages (including minimum,
19 regular, overtime, and double time wages) for all hours worked;
- 20 (b) Whether Defendants paid Plaintiff and Class Members their overtime and double time
21 hours worked at their regular rate of pay and whether they were paid overtime and
22 double time wages;
- 23 (c) Whether Defendants required Plaintiff and Class Members to work off-the-clock
24 without compensation;
- 25 (d) Whether Defendants rounded Plaintiff’s and Class Members’ time worked to
26 Defendants’ advantage;
- 27 (e) Whether Defendants failed to provide timely, uninterrupted, off-duty meal periods to
28 Plaintiff and Class Members, or required Plaintiff and Class Members to work through

1 their meal periods without compensation in lieu thereof;

2 (f) Whether Defendants failed to permit timely, uninterrupted, off-duty rest breaks for
3 every four hours or major fraction thereof worked by Plaintiff and Class Members, or
4 required Plaintiff and Class Members to work through their rest breaks without
5 compensation in lieu thereof;

6 (g) Whether Defendants failed to provide Plaintiff and Class Members with accurate
7 itemized wage statements;

8 (h) Whether Defendants failed to timely pay the Plaintiff and Class Members all wages
9 due immediately upon termination or within 72 hours of resignation;

10 (i) Whether Defendants' conduct was willful or reckless; and

11 (j) Whether Defendants engaged in unfair business practices in violation of Business and
12 Professions Code sections 17200, *et seq.*

13 29. This action is brought, and may properly be maintained, as a class action pursuant to
14 California Code of Civil Procedure section 382 because there is a well-defined community of interest
15 in the litigation, and the proposed class is easily ascertainable. Further, Plaintiff and Class Members
16 have suffered common injuries as a result of Defendants' systemic employment policies and practices.
17 Looking to Defendants' employment policies and practices, the Court can adjudicate the lawfulness
18 of those policies and practices on a class-wide basis, according to proof, and issue an award to Plaintiff
19 and Class Members accordingly. In addition, answers to common questions raised in this FAC will
20 advance resolution of each individual Class Member's claims.

21 30. **Numerosity:** The Class Members are so numerous that joinder of all members is
22 impractical. Although the members of the entire Class and Subclass are unknown to Plaintiff at this
23 time, on information and belief, the class is estimated to be greater than 100 individuals.

24 31. **Ascertainability:** The identities of the Class Members are readily ascertainable by
25 inspection of Defendants' employment and payroll records.

26 32. **Typicality:** The claims (or defenses, if any) of Plaintiff are typical of the claims of the
27 Class Members because Defendants' failure to comply with the provisions of California's wage and
28 hour laws entitled each Class Member to similar pay, benefits, and other relief. The injuries sustained

by Plaintiff are also typical of the injuries sustained by Class Members because they arise out of and are caused by Defendants' common course of conduct as alleged herein.

33. **Adequacy:** Plaintiff will fairly and adequately represent and protect the interests of all Class Members because it is in Plaintiff's best interest to prosecute the claims alleged herein to obtain full compensation and penalties due to Plaintiff and the Class Members. Plaintiff's attorneys, as proposed class counsel, are competent and experienced in litigating large employment class actions and versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have been and will be necessarily expended for the prosecution of this action for the substantial benefit of the Class Members.

34. **Superiority:** The nature of this action makes use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner for the entire Class and Subclass at the same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently manage this case as a class action.

35. **Public Policy Considerations:** Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide class members who are not named in the FAC with a type of anonymity that allows for the vindication of their rights while affording them privacy protections.

GENERAL ALLEGATIONS

36. **Background:** At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees at Defendants' restaurants within California. Defendants employed Plaintiff in a non-exempt position during his employment and continue to employ non-exempt employees within California.

37. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were

1 knowledgeable about California's wage and hour laws, employment and personnel practices, and the
2 requirements of California law.

3 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
4 have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the
5 financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so
6 all in order to increase Defendants' profits.

7 39. **Unpaid Wages:** Plaintiff is informed and believes, and thereon alleges, that Defendants
8 knew or should have known that Plaintiff and Class Members were entitled to receive at least minimum
9 wages and wages at their regular rate of pay and that they were not receiving minimum and regular
10 wages for all work that was required to be performed. In violation of the Labor Code and IWC Wage
11 Orders, Plaintiff and Class Members were not paid at least minimum wages when Defendants required
12 them to clock out for their shifts and continue working, adjusted their time punches to reflect less
13 hours worked, and rounded their hours worked to Defendants' advantage.

14 40. **Unpaid Overtime:** Plaintiff is informed and believes, and thereon alleges, that
15 Defendants knew or should have known that Plaintiff and Class Members were entitled to overtime
16 compensation for all hours worked in excess of eight (8) in a workday and/or 40 in a workweek, and
17 double time for all hours worked in excess of 12 in a workday and/or in excess of eight (8) hours on
18 the seventh consecutive day of work in a workweek. In violation of the Labor Code and IWC Wage
19 Orders, Plaintiff and Class Members were not paid at their lawful overtime and double time rate for
20 all overtime and double time hours worked. Specifically, Defendants paid Plaintiff and Class Members
21 only straight time wages for hours worked in excess of eight in a workday and/or forty in a workweek,
22 and/or failed to pay any wages for such hours worked. In addition, Defendants required Plaintiff and
23 Class Members to work off-the-clock without compensation, adjusted their time punches to reflect
24 less hours worked, and rounded their time worked to Defendants' advantage.

25 41. **Meal Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
26 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
27 timely, off-duty, uninterrupted 30-minute meal period for every five hours of work, or payment of one
28 additional hour of pay at their regular rate of pay when they did not receive a compliant meal period.

1 In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive
2 compliant meal periods due to Defendants' failure to adopt and implement a policy authorizing a
3 second 30 minute meal period when Plaintiff and Class Members worked shifts in excess of 10 hours,
4 and Defendants' practice of prioritizing work demands over allowing employees to take compliant
5 meal periods. Accordingly, Defendants failed to provide timely, uninterrupted off-duty 30-minute
6 second meal periods. Defendants also failed to pay Plaintiff and Class Members one additional hour
7 of pay at their regular rate of pay when Plaintiff and Class Members did not receive a compliant meal
8 period.

9 **42. Rest Period Violations:** Plaintiff is informed and believes, and thereon alleges, that
10 Defendants knew or should have known that Plaintiff and Class Members were entitled to receive a
11 ten-minute, off-duty, uninterrupted rest period for every four hours worked, or major fraction thereof,
12 or payment of one additional hour of pay at their regular rate of pay when they were not permitted to
13 take a compliant rest period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
14 Members were not permitted to take compliant rest breaks, due to Defendants' failure to adopt and
15 implement a rest break policy, and Defendants' practice of prioritizing work demands over allowing
16 employees to take compliant rest breaks. Consequently, Plaintiff and Class Members were not
17 authorized or permitted to take rest breaks, including first, second, and third rest breaks when they
18 worked in excess of three-and-a-half (3.5), six (6), and/or 10 hours per workday. Defendants failed to
19 pay Plaintiff and Class Members one additional hour of pay at their regular rate of pay when they did
20 not receive a compliant rest break.

21 **43. Waiting Time Penalties:** Plaintiff is informed and believes, and thereon alleges, that
22 Defendants knew or should have known that Plaintiff and Waiting Time Subclass Members who
23 separated from their employment with Defendants during the statutory period were entitled to timely
24 payment of all wages due. In violation of the Labor Code, Plaintiff and Waiting Time Class Members
25 did not receive payment of all wages owed upon separation within the permissible time period due to,
26 *inter alia*, Defendants' failure to pay all wages, and meal and rest period premiums due to Plaintiff
27 and Class Members.

28 **44. Wage Statement Violations:** Plaintiff is informed and believes, and thereon alleges

1 that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive
2 complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders,
3 Plaintiff and Class Members were not furnished with complete and accurate wage statements that show
4 all of the information required by Labor Code section 226, including, but not limited to, the gross and
5 net wages earned (including amounts paid in cash), the total hours worked, all applicable hourly rates
6 in effect during the pay period, the corresponding number of hours worked at each hourly rate, and
7 the name and address of the legal entity that is the employer.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY ALL WAGES**

10 **(AGAINST ALL DEFENDANTS)**

11 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
12 fully set forth herein.

13 46. At all times herein relevant, Defendants had a duty to comply with Labor Code sections
14 204, 206, 1182.12, 1194, 1194.2, 1197, 1198, the applicable IWC Wage Orders, and all applicable
15 local minimum wage ordinances in effect throughout California.

16 47. Labor Code section 204 and the IWC Wage Orders require timely payment of all wages
17 owed on regularly scheduled paydays at least twice during each calendar month, on days designated
18 in advance by the employer as the regular paydays. All wages earned in excess of the normal work
19 period must be paid no later than the payday for the next regular payroll period.

20 48. Labor Code section 206 provides that in case of a dispute over wages, the employer
21 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to
22 the employee all remedies he/she is otherwise entitled to as to any balance claimed.

23 49. The IWC Wage Orders define “hours worked” as “the time during which an employee
24 is subject to the control of an employer and includes all time the employee is suffered or permitted to
25 work, whether or not required to do so.”

26 50. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid to
27 all employees in California for all hours worked. Local minimum wage ordinances, may provide for
28 higher minimum wage rates that must be paid to employees for all hours worked in those locales where

1 each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay less than
2 the state or local minimum wage, whichever is higher, for any hour of work.

3 51. Labor Code section 1194 requires that employers pay employees at least the legal
4 minimum wage rate for all hours worked, notwithstanding any agreement to work for a lesser wage.
5 Labor Code section 1194 further authorizes any employee receiving less than the legal minimum wage
6 applicable to the employee to recover in a civil action the unpaid balance of the full amount of wages,
7 along with interest thereon, reasonable attorneys' fees and costs of suit.

8 52. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an amount
9 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

10 53. Labor Code section 1198 prohibits employers from employing for longer hours or less
11 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
12 the Labor Commissioner.

13 54. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
14 all wages due, including minimum and regular wages due to Defendants' practices of requiring
15 Plaintiff and Class Members to work off-the-clock without compensation, adjusting their time punches
16 to reflect less hours worked, and rounding their time worked to Defendants' advantage.

17 55. In violation of California law, Defendants have knowingly and willfully refused to
18 perform their obligations and compensate Plaintiff and Class Members for all wages earned as alleged
19 above.

20 56. Defendants' failure to pay Plaintiff and Class Members all earned minimum and regular
21 wages in accordance with Labor Code sections 204, 206, 1182.12, 1194, 1194.2, 1197, 1198, the
22 applicable IWC Wage Orders, and all applicable local minimum wage ordinances in effect throughout
23 California, Plaintiff and Class Members are entitled to recover the full amount of unpaid wages,
24 liquidated damages, prejudgment interest, and statutory penalties, along with attorneys' fees and costs
25 in amounts that will be established at trial.

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58. At all relevant times, Defendants had a duty to comply with Labor Code sections 204, 206, 510, 1194, and 1198 and the applicable IWC Wage Orders.

60. Labor Code section 206 provides that in case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

62. Labor Code section 1194 requires that employers pay employees at least the legal overtime rate for all overtime hours worked, notwithstanding any agreement to work for a lesser wage. Labor Code section 1194 further authorizes any employee receiving less than the legal overtime compensation applicable to the employee to recover in a civil action the unpaid balance of the full amount of overtime compensation, along with interest thereon, reasonable attorneys' fees and costs of

1 suit.

2 63. Labor Code section 1198 prohibits employers from employing for longer hours or less
3 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by
4 the Labor Commissioner.

5 64. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
6 all earned overtime wages, due to Defendants' practices of requiring Plaintiff and Class Members to
7 work off-the-clock, adjusting their time punches to reflect less hours worked, rounding their time
8 worked to Defendants' advantage, paying only straight time wages for hours worked in excess of eight
9 in a workday and/or 40 in a workweek, and/or simply failing to pay any overtime and double time
10 wages for such hours worked.

11 65. In violation of state law, Defendants have knowingly and willfully refused to perform
12 their obligations and compensate Plaintiff and Class Members for all overtime wages earned as alleged
13 above.

14 66. Defendants' failure to pay overtime compensation due to Plaintiff and Class Members
15 in accordance with Labor Code sections 204, 206, 510, 1194 and 1198 and the IWC Wage Orders,
16 Plaintiff and Class Members are entitled to recover the full amount of unpaid overtime compensation,
17 prejudgment interest, statutory penalties, attorneys' fees, and costs in amounts that will be established
18 at trial.

19 **THIRD CAUSE OF ACTION**

20 **MEAL PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 67. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
23 fully set forth herein.

24 68. At all relevant times, Defendants had a duty to comply with Labor Code sections 226.7
25 and 512, and the applicable IWC Wage Orders.

26 69. Labor Code section 512 and the IWC Wage Orders prohibit an employer from
27 employing any person for a work period of more than 5 hours per day without providing the employee
28 with a meal period of not less than 30 minutes (commencing before the employee's fifth hour of work),

1 except that if the total work period per day is no more than 6 hours, the meal period may be waived
2 by mutual consent of the employer and employee. A second meal period of not less than 30 minutes
3 is required if an employee works more than 10 hours per day and must begin before the employee's
4 tenth hour of work, except if the total hours worked is no more than 12 hours, the second meal period
5 may be waived by mutual consent of the employer and employee, but only if the first meal period was
6 not waived. An employer must relieve an employee of all duties during meal periods.

7 70. The applicable IWC Wage Orders state that "[u]nless the employee is relieved of all
8 duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period
9 and counted as time worked."

10 71. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
11 requiring any employee to work during a meal period mandated by any California statute, regulation,
12 standard or order. If an employer fails to provide an employee with a meal period in accordance with
13 state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay the
14 employee one additional hour of pay at the employee's regular rate of compensation for each workday
15 that the meal period is noncompliant.

16 72. During the relevant time period, Plaintiff and Class Members did not receive compliant
17 second meal periods when they worked more than 10 hours per day due to Defendants' unlawful
18 pattern, practice, and policy of not providing second meal periods. Accordingly, Defendants failed to
19 provide timely, off-duty uninterrupted 30-minute second meal periods to Plaintiff and Class Members
20 during the Class Period.

21 73. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
22 meal period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and
23 the applicable IWC Wage Order.

24 74. As a result of Defendants' failure to provide compliant meal periods and pay meal
25 period premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor
26 Code sections 226.7 and 512, Plaintiff and Class Members suffered and continue to suffer a loss of
27 wages and compensation.

28 75. Because Plaintiff and Class Members were and/or are entitled to such meal periods or

1 “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according to
2 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
3 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

4 76. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys’
5 fees and costs from Defendants in an amount subject to proof and approved by the Court.

6 **FOURTH CAUSE OF ACTION**
7 **REST PERIOD VIOLATIONS**
8 **(AGAINST ALL DEFENDANTS)**

9 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
10 fully set forth herein.

11 78. At all relevant times, Defendants had a duty to comply with Labor Code section 226.7
12 and the applicable IWC Wage Orders.

13 79. The IWC Wage Orders require employers to authorize and permit all employees to take
14 10-minute duty-free rest periods for each four hours worked, or major fraction thereof.

15 80. If an employer fails to provide an employee with a rest period in accordance with
16 California law, Labor Code section 226.7(c) and the IWC Wage Orders require that the employer pay
17 the employee one additional hour of pay at the employee’s regular rate of compensation for each
18 workday that the rest period is noncompliant.

19 81. During the relevant time period, Defendants did not implement a compliant rest break
20 policy. Consequently, Plaintiff and Class Members did not receive a 10-minute rest period for every
21 four hours worked or major fraction thereof because they were required to work through their daily
22 rest periods and/or were not authorized to take their rest periods. Accordingly, Defendants failed to
23 provide first, second, and third rest breaks when Plaintiff and Class Members worked in excess of
24 three-and-a-half (3.5), six (6), and/or 10 hours per workday.

25 82. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
26 rest period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
27 applicable IWC Wage Order.

28 83. As a result of Defendants’ failure to provide compliant rest periods and pay rest period

1 premiums to Plaintiff and Class Members in accordance with the IWC Wage Orders and Labor Code
2 sections 226.7 and 516, Plaintiff and Class Members suffered and continue to suffer a loss of wages
3 and compensation.

4 84. Because Plaintiff and Class Members were and/or are entitled to such rest periods or
5 “premium pay” in lieu thereof, they are entitled to such payment per shift in an amount according to
6 proof. To the extent such unpaid premiums are deemed unpaid wages, Plaintiff will also seek pre- and
7 post-judgment interest as provided by law at 10% per annum, in an amount according to proof.

8 85. Also, pursuant to Code of Civil Procedure section 1021.5, Plaintiff will seek attorneys’
9 fees and costs from Defendants in an amount subject to proof and approved by the Court.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS** 12 **(AGAINST ALL DEFENDANTS)**

13 86. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
14 fully set forth herein.

15 87. At all relevant times, Defendants had a duty to comply with Labor Code section 226.

16 88. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
17 of wages, employers must furnish each employee with an accurate itemized wage statement in writing
18 that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the number of any
19 piece-rate units earned and all applicable piece rates, (4) all deductions made from wages, (5) net
20 wages earned, (6) the inclusive dates of the pay period, (7) the name and last four digits or employment
21 identification number of the employee, (8) the name and address of the legal entity that is the
22 employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked
23 at each hourly rate.

24 89. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of a
25 knowing and intentional failure by an employer to provide an accurate itemized wage statement to
26 recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each violation
27 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee, in addition to
28 an award of costs and attorneys’ fees.

1 90. During the relevant time period, Defendants have knowingly and intentionally failed
2 to comply with Labor Code section 226(a) on wage statements that were provided to Plaintiff and
3 Class Members. The deficiencies include, among other things, Defendants' failure to correctly state
4 the gross and net wages earned (including amounts paid in cash), the total hours worked, all applicable
5 hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly
6 rate, and the name and address of the legal entity that is the employer.

7 91. As a result of Defendants' violation of Labor Code section 226(a), Plaintiff and Class
8 Members have suffered injury and damage to their statutorily protected rights. Specifically, Plaintiff
9 and Class Members have been injured by Defendants' intentional violation of Labor Code section
10 226(a) because they were denied both their legal right to receive, and their protected interest in
11 receiving, accurate itemized wage statements under Labor Code section 226(a). Plaintiff has had to
12 file this lawsuit in order to determine the extent of the underpayment of wages, thereby causing
13 Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
14 incur these costs had Defendants provided the accurate wages earned. This has also delayed Plaintiff's
15 ability to demand and recover the underpayment of wages from Defendants.

16 92. Defendants' violations of Labor Code section 226(a) prevented Plaintiff and Class
17 Members from knowing, understanding and disputing the wages paid to them, and resulted in an
18 unjustified economic enrichment to Defendants. As a result of Defendants' knowing and intentional
19 failure to comply with Labor Code section 226(a), Plaintiff and Class Members have suffered an
20 injury, and the exact amount of damages and/or penalties is all in an amount to be shown according to
21 proof at trial.

22 93. Plaintiff and Class Members are also entitled to injunctive relief under Labor Code
23 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the recovery
24 of attorneys' fees and costs incurred in obtaining this injunctive relief.

25 **SIXTH CAUSE OF ACTION**

26 **WAITING TIME PENALTIES**

27 **(AGAINST ALL DEFENDANTS)**

28 94. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though

1 fully set forth herein.

2 95. At all relevant times, Defendants had a duty to comply with Labor Code sections 201,
3 202, and 203. Defendants failed to comply with these final paycheck requirements with respect to
4 Plaintiff and Waiting Time Subclass Members.

5 96. Labor Code section 201 requires that if an employer discharges an employee, the wages
6 earned and unpaid at the time of discharge are due and payable immediately. Labor Code section 202
7 requires that if “an employee not having a written contract for a definite period” quits, the employee’s
8 wages shall become due and payable no later than 72 hours thereafter, unless the employee has given
9 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
10 her wages at the time of quitting.

11 97. Labor Code section 203 provides that if an employer willfully fails to pay, without
12 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
13 employee shall continue as a penalty from the due date thereof at the same rate until paid or until an
14 action therefor is commenced, but that the wages shall not continue for more than 30 days per
15 employee.

16 98. During the relevant time period, Defendants willfully failed to pay Waiting Time
17 Subclass Members all their earned wages upon termination including, but not limited to, minimum,
18 regular, overtime, and double time compensation, and premium compensation either at the time of
19 discharge or within 72 hours of leaving Defendants’ employ.

20 99. As a result of Defendants’ failure to timely pay all wages owed to Plaintiff and Waiting
21 Time Subclass Members in accordance with Labor Code sections 201, 202 and 203, Plaintiff and
22 Waiting Time Subclass Members are entitled to recover waiting time penalties, prejudgment interest,
23 attorneys’ fees, and costs in amounts that will be established at trial.

24 **SEVENTH CAUSE OF ACTION**

25 **VIOLATION OF THE UNFAIR COMPETITION LAW**

26 **(AGAINST ALL DEFENDANTS)**

27 100. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though
28 fully set forth herein.

1 101. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful
2 and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights affecting the
3 public interest within the meaning of Code of Civil Procedure section 1021.5.

4 102. Defendants' activities, as alleged herein, violate California law and constitute unlawful
5 business acts or practices in violation of Business and Professions Code sections 17200, *et seq.*

6 103. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated
7 on the violation of any state or federal law.

8 104. Defendants' policies and practices have violated state law in at least the following
9 respects:

- 10 (a) Failing to pay all minimum and regular wages due to Plaintiff and Class Members in
11 violation of Labor Code sections 204, 206, 1182.12, 1194, 1194.2, 1197 and 1198;
12 (b) Failing to pay all overtime and double time wages due to Plaintiff and Class Members
13 in violation of Labor Code sections 510, 1194 and 1198;
14 (c) Failing to provide meal periods without paying Plaintiff and Class Members premium
15 wages for every day in which a meal period was not provided in violation of Labor
16 Code sections 226.7 and 512;
17 (d) Failing to authorize or permit rest breaks without paying Plaintiff and Class Members
18 premium wages for every day in which a rest break was not authorized or permitted in
19 violation of Labor Code section 226.7;
20 (e) Failing to provide Plaintiff and Class Members with accurate itemized wage statements
21 in violation of Labor Code section 226; and
22 (f) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass Members
23 upon separation of employment in violation of Labor Code sections 201, 202 and 203.

24 105. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
25 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
26 undercut their competitors in the restaurant industry and establish and gain a greater foothold in the
27 marketplace.

28 106. Pursuant to Business and Professions Code sections 17202, 17203, and 17208,

1 Plaintiff and Class Members are entitled to restitution of the wages unlawfully withheld and retained
2 by Defendants during a period that commences four years prior to the filing of this action; an award
3 of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and other applicable laws; and
4 an award of costs.

5 107. Plaintiff and Class Members are entitled to an injunction, restitution, and other
6 equitable relief against such unlawful practices to return all funds over which Plaintiff and Class
7 Members have an ownership interest and to prevent future damage pursuant to Business and
8 Professions Code sections 17200 *et seq.*

9 **EIGHTH CAUSE OF ACTION**

10 **ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

11 **(AGAINST ALL DEFENDANTS)**

12 108. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 109. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
15 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to
16 have been violated, and after receiving notice from the LWDA of its intention not to investigate or
17 after 65 days have passed without notice from the LWDA.

18 110. On January 31, 2020, Plaintiff gave written notice of the specified provisions alleged
19 to have been violated, including the facts and theories to support the alleged violations, as required
20 by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants and
21 to the LWDA by electronically filing the notice via the Department of Industrial Relations' website.
22 More than 65 days has passed since Plaintiff submitted his PAGA notice to the LWDA without notice
23 from the LWDA. Accordingly, Plaintiff has exhausted his administrative remedies and may amend
24 his Complaint to add a PAGA cause of action.

25 111. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
26 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
27 divisions, commissions, boards, agencies or employees for violation of the code may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself and other current or former employees pursuant to the procedures specified in Labor Code
2 section 2699.3.

3 112. For all provisions of the Labor Code except those for which a civil penalty is
4 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred
5 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
7 period in which Defendants violated these provisions of the Labor Code.

8 113. Defendants' conduct violates numerous Labor Code sections, including, but not
9 limited to, the following:

10 (a) Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1182.12, 1194,
11 1194.2, 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
12 regular, overtime, and double time wages) owed to Plaintiff and other aggrieved employees during
13 employment and upon separation of employment as herein alleged;

14 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
15 periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal
16 periods as herein alleged;

17 (c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to
18 Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as
19 herein alleged;

20 (d) Violation of Labor Code sections 226 for failure to provide accurate itemized
21 wage statements to Plaintiff and other aggrieved employees as herein alleged; and

22 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
23 accurate records regarding the employment of Plaintiff and other aggrieved employees as herein
24 alleged.

25 114. Further, Labor Code section 558(a) provides "[a]ny employer or other person acting
26 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
28 be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each

1 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
2 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
3 for which the employee was underpaid.”

4 115. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
5 either individually or as an officer, agent, or employee of another person, who pays or causes to be
6 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
7 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
8 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
9 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
10 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
11 period for which the employee is underpaid regardless of whether the initial violation is intentionally
12 committed.

13 116. As set forth above, Defendants have violated numerous provisions of the Labor Code
14 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also
15 seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the underpaid
16 employees, and the State of California.

17 117. Plaintiff is an “aggrieved employee” because he was employed by the alleged
18 violators and had one or more of the alleged violations committed against him, and therefore is
19 properly suited to represent the interests of all other aggrieved employees.

20 118. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3
21 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
22 other aggrieved employees under the PAGA.

23 119. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
24 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
25 above.

26 120. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
27 herein.

28 ///

PRAYER FOR RELIEF

Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For certification of this action as a class action, including certifying the Class and Subclass alleged by Plaintiff;
2. For appointment of Plaintiff Valentin Lopez as the class representative;
3. For appointment of Daily Aljian LLP and the Law Office of Daniel J. Hyun as class counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For economic and/or special damages in an amount according to proof with interest thereon;
6. For damages, monetary relief, wages, premiums, and penalties, including interest thereon;
7. For waiting time penalties pursuant to Labor Code section 203;
8. For liquidated damages pursuant to Labor Code section 1194.2;
9. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
10. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and Professions Code sections 17200 *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code sections 17200, *et seq.*;
12. For prejudgment interest on all sums recovered pursuant to Labor Code section 218.6 and Civil Code sections 3287 and 3289;
13. For post judgment interest on all amounts awarded to Plaintiff and Class Members as provided by law;

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14. For recovery of attorneys’ fees and costs provided by Labor Code sections 226, 1194, 2699(g)(1), and Code of Civil Procedure section 1021.5;
15. For injunctive relief as provided by the California Labor Code and California Business and Professions Code sections 17200, *et seq.*;
16. For PAGA penalties; and
17. For such other relief as the Court deems just and proper.

Dated: July 23, 2020

DAILY ALJIAN LLP &
LAW OFFICE OF DANIEL J. HYUN

By: /s/ Shelly D. Song
Justin E. D. Daily
Shelly D. Song
Daniel J. Hyun
Attorneys for Plaintiff VALENTIN LOPEZ

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Case Name: *VALENTIN LOPEZ, an individual, on behalf of himself and others similarly situated v. NORTHERN CAFÉ; JIANG & YAN CORPORATION, a California corporation; and DOES 1 through 50, inclusive,*

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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 Via Electronic Mail Only

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Courtney Dorner

Courtney Dorner