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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BY FAX

BRANDY GOMES and JAMAR
SPENCER, individually, and on behalf of
other members of the general public
similarly situated, and as aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), and on behalf of
the State of California and other aggrieved
employees

Plaintiff,

vs.

KURA SUSHI USA, INC., a Delaware
corporation and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 19STCV18977

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Provide Rest Periods);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;
- (9) Violation of California Business & Professions Code §§ 17200, et seq. (Unlawful Business Practices); and

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(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Brandy Gomes, individually and on behalf of all other members of the public
2 similarly situated, and Plaintiff Jamar Spencer, as an aggrieved employee and on behalf of the
3 State of California and all other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This action is brought as a class action pursuant to California Code of Civil
6 Procedure section 382.

7 2. This action is also brought as representative action pursuant to California
8 Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties and any other available
9 relief on behalf of the State of California and other current and former employees who worked
10 for Defendants in California as non-exempt, hourly-paid and who received at least one wage
11 statement and against whom one or more violations of any provision in Division 2 Part 2
12 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the
13 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth
14 in this complaint.

15 3. The monetary damages, penalties, and restitution sought by Plaintiffs exceed
16 the minimal jurisdiction limits of the Superior Court and will be established according to
17 proof at trial. This Court has jurisdiction over this action pursuant to the California
18 Constitution, Article VI, section 10. The statutes under which this action is brought do not
19 specify any other basis for jurisdiction. Plaintiffs’ share of damages, penalties, and other
20 relief sought in this action does not exceed \$75,000.

21 4. This Court has jurisdiction over Defendants because Defendants are either
22 citizens of California, have sufficient minimum contacts in California, or otherwise
23 intentionally avail themselves of the California market so as to render the exercise of
24 jurisdiction over them by the California courts consistent with traditional notions of fair play
25 and substantial justice.

26 5. Venue is proper in this Court, because Defendants employ persons in this
27 county and employed Plaintiff Gomes in this county, and thus a substantial portion of the
28 transactions and occurrences related to this action occurred in this county.

THE PARTIES

6. Plaintiff BRANDY GOMES worked for Defendants as an hourly-paid, non-exempt Server from approximately April 2013 to July 2017. Plaintiff Gomes worked for Defendants at their restaurant location in Torrance, California. Plaintiff Gomes worked approximately six (6) hours and 30 minutes per day, four (4) days per week. At the time her employment ended, Plaintiff Gomes earned \$10.50 per hour, plus tips. Plaintiff Gomes's job duties included taking drink orders, bussing tables, answering customer questions, facilitating bill payment, and training new servers.

7. Plaintiff JAMAR SPENCER was employed by Defendants as a non-exempt, hourly paid Server from approximately March 20, 2019 to April 19, 2019. Plaintiff Spencer worked for Defendants at their Sacramento, California restaurant located at 1600 Ethan Way, Suite #10, Sacramento, California 95825. During his employment, Plaintiff Spencer typically worked six (6) to eight (8) hours per day, four (4) to five (5) days per week, and approximately twenty-four (24) to forty (40) hours per week. At the time Plaintiff Spencer's employment with Defendants ended, he earned approximately \$12 per hour. Plaintiff Spencer's job duties included, without limitation, explaining Defendants' conveyor belt system to customers, fulfilling and serving drink orders, bussing tables, and filling condiment bottles.

8. Defendant KURA SUSHI USA, INC. was and is, upon information and belief, a Delaware Corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

9. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

10. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of KURA SUSHI

1 USA, INC. at all relevant times.

2 11. Plaintiffs are informed and believe, and thereon allege, that each and all of the
3 acts and omissions alleged herein was performed by, or is attributable to, KURA SUSHI USA,
4 INC. and/or DOES 1 through 10 (collectively “Defendants” or “KURA SUSHI”), each acting
5 as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of
6 the other co-Defendants, and was acting within the course and scope of such agency,
7 employment, joint venture, or concerted activity with legal authority to act on the others’
8 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
9 policy of Defendants.

10 12. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

14 13. Plaintiffs are informed and believes, and thereon alleges, that each of said
15 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
16 omissions, occurrences, and transactions alleged herein.

17 **GENERAL ALLEGATIONS**

18 14. Defendants operate and manage a chain of Japanese-themed restaurants with
19 sushi served via conveyor belts. Defendants own or franchise over 365 restaurant locations
20 around the world. There are approximately nine (9) KURA SUSHI locations located in
21 California, all of which are company-owned. Upon information and belief, Defendants
22 employ over 300 employees in California at company-owned restaurant locations.

23 15. In particular, Plaintiff Gomes and class members, on information and belief,
24 received the same standardized documents and/or written policies. Upon information and
25 belief, the usage of standardized documents and/or written policies, including new hire
26 documents, indicate that Defendants dictated policies at the corporate level and implemented
27 them company-wide, regardless of their employees’ assigned locations or positions. Upon
28 information and belief, Defendants set forth uniform policies and procedures in several

documents provided at an employee's time of hire, including, but not limited to, an employee handbook.

16. On information and belief, all transactions regarding hiring, terminations, promotions, pay increases, and employee transfers, etc., relating to Defendants' non-exempt, hourly-paid California employees were submitted to and processed by Defendants' HR department in Irvine, California. Additionally, on information and belief, Defendants' corporate records, business records, data, and other information related to Defendants, including, in particular, HR records pertaining to Defendants' non-exempt, hourly-paid California employees, are also maintained at Defendants' United States corporate headquarters in Irvine, California.

17. Upon information and belief, Defendants maintain a centralized Payroll department in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiffs, class members, and other aggrieved employees. Based upon information and belief, Defendants issued the same formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their work location. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

18. Defendants continue to employ non-exempt or hourly-paid employees in California.

19. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law.

20. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs, class members, and other aggrieved employees were not paid for all hours worked because all hours worked were not recorded.

21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs, class members, and other aggrieved employees were
2 entitled to receive certain wages for overtime compensation and that they were not receiving
3 certain wages for overtime compensation.

4 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs, class members, and other aggrieved employees were
6 entitled to receive at least minimum wages for compensation and that they were not receiving
7 at least minimum wages for work that was required to be done off-the-clock. In violation of
8 the California Labor Code, Plaintiffs, class members, and other aggrieved employees were
9 not paid at least minimum wages for work done off-the-clock.

10 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs, class members, and other aggrieved employees were
12 entitled to meal periods in accordance with the Labor Code or payment of one (1) additional
13 hour of pay at their regular rates of pay when they were not provided with timely,
14 uninterrupted, thirty (30) minute meal periods and that Plaintiffs, class members, and other
15 aggrieved employees were not provided with all meal periods or payment of one (1) additional
16 hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted,
17 thirty (30) minute meal period.

18 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs, class members, and other aggrieved employees were
20 entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or
21 payment of one (1) additional hour of pay at their regular rates of pay when they were not
22 authorized and permitted to take a compliant rest period. In violation of the California Labor
23 Code, Plaintiffs, class members, and other aggrieved employees were not authorized and
24 permitted to take compliant rest periods, nor did Defendants provide Plaintiffs, class members
25 and other aggrieved employees with payment of one (1) additional hour of pay at their regular
26 rates of pay when they were not authorized and permitted to take a compliant rest period.

27 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs, class members, and other aggrieved employees were

1 entitled to timely payment of wages during their employment. In violation of the California
2 Labor Code, Plaintiffs, class members, and other aggrieved employees did not receive
3 payment of all wages, including, but not limited to, overtime wages, minimum wages, and
4 meal and rest period premiums, within permissible time periods.

5 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs, class members, other aggrieved employees were entitled to
7 timely payment of all wages earned upon termination of employment. In violation of the
8 California Labor Code, Plaintiffs, class members, and other aggrieved employees did not
9 receive payment of all wages due, including, but not limited to, overtime wages, minimum
10 wages, and meal and rest period premiums, within permissible time periods.

11 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs, class members, and other aggrieved employees were
13 entitled to receive reimbursement for all business-related expenses and costs they incurred
14 during the course and scope of their employment, and that they did not receive reimbursement
15 of applicable business-related expenses and costs they incurred

16 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that they were not permitted to compel or coerce Plaintiffs, class members
18 and other aggrieved employees to patronize their business in the purchase of anything of value
19 but did in fact require Plaintiffs, class members, and other aggrieved employees to purchase
20 various things, including uniforms and food from Defendants.

21 29. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
22 or should have known that they could not implement an unreasonable employer-mandated tip
23 pooling policy, which required Plaintiff Gomes, class members, and other aggrieved
24 employees to share tips with kitchen staff and/or back of the house employees.

25 30. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate
27 Plaintiffs, class members, and other aggrieved employees for all hours worked, and that
28 Defendants had the financial ability to pay such compensation, but willfully, knowingly, and

1 intentionally failed to do so, and falsely represented to Plaintiffs, class members, and other
2 aggrieved employees that they were properly denied wages, all in order to increase
3 Defendants' profits.

4 31. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
5 knew or should have known that Plaintiff Spencer and other aggrieved employees were entitled
6 to receive complete and accurate wage statements in accordance with California law. In
7 violation of the California Labor Code, Plaintiff Spencer and other aggrieved employees were
8 not provided complete and accurate wage statements.

9 32. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
10 knew or should have known that they had a duty to maintain accurate and complete payroll
11 records, including hours worked, in accordance with the Labor Code and applicable IWC Wage
12 Order, but willfully, knowingly, and intentionally failed to do so. Plaintiff Spencer is informed
13 and believes, and thereon alleges, that Defendants knew or should have known that, when
14 issuing an instrument or acknowledgment of indebtedness in payment for wages due to an
15 employee, Defendants were required to have sufficient funds at time of issuance, and for a
16 reasonable time thereafter;

17 33. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
18 knew or should have known that employees were entitled to change rooms, separate from the
19 toilet rooms.

20 34. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
21 knew or should have known that employees were entitled to suitable resting facilities, separate
22 from the toilet rooms, for use during working hours.

23 35. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
24 knew or should have known that when employees were not engaged in the active duties of
25 their employment that require standing, such as during a lull in business activity, Defendants
26 were required to provide an adequate number of suitable seats within a reasonable proximity
27 of the work area for employees to access and use when it did not interfere with the
28 performance of their duties.

1 36. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
2 knew or should have known that employees were entitled to be paid reporting time pay when
3 they reported to work for their scheduled shift but were put to work for less than half of the
4 regularly scheduled time.

5 37. Plaintiff Spencer is informed and believes, and thereon alleges, that Defendants
6 knew or should have known that Plaintiff Spencer and other aggrieved employees were
7 entitled to be paid a split-shift premium when they worked a schedule interrupted by non-paid
8 working periods established by Defendants, other than bona-fide rest or meal periods.

9 **PAGA REPRESENTATIVE ALLEGATIONS**

10 38. At all times herein set forth, PAGA provides that any provision of law under
11 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
12 assessed and collected by the LWDA for violations of the California Labor Code and
13 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
14 civil action brought on behalf of themselves and other current or former employees pursuant
15 to procedures outlined in California Labor Code section 2699.3.

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

20 40. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
21 employee, including Plaintiff Spencer, may pursue a civil action arising under PAGA after the
22 following requirements have been met:

- 23 (a) The aggrieved employee or representative shall give written notice by
24 online filing with the LWDA and by certified mail to the employer of
25 the specific provisions of the California Labor Code alleged to have
26 been violated (other than those listed in Section 2699.5), including the
27 facts and theories to support the alleged violation
28 (b) An aggrieved employee’s notice filed with the LWDA pursuant to

2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the LWDA if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to Section 269.

41. On February 24, 2020 Plaintiff Spencer provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Spencer's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Spencer's written notice and assigned Plaintiff Spencer PAGA Case Number LWDA-CM-774514-20. A true and correct copy of Plaintiff Spencer's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

42. As of the filing date of this complaint, over 65 days have passed since Plaintiff Spencer sent the notice described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiff Spencer's claims and Defendants have not cured the violations.

43. Thus, Plaintiff Spencer has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 212, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

1 44. Labor Code section 558 (a) provides “[a]ny employer or other person acting on
2 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
3 provision regulating hours and days of work in any order of the Industrial Welfare
4 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
5 dollars (\$50) for each underpaid employee for each pay period for which the employee was
6 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each
7 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
8 period for which the employee was underpaid in addition to an amount sufficient to recover
9 underpaid wages.” Labor Code section 558(c) provides “[t]he civil penalties provided for in
10 this section are in addition to any other civil or criminal penalty provided by law.” Plaintiff
11 Spencer, acting in the public interest as a private attorney general, seeks assessment and
12 collection of civil penalties under Labor Code section 558 for himself, all other aggrieved
13 employees, and the State of California against Defendants for violations of Labor Code
14 sections 510 and 512(a). Plaintiff Spencer, acting in the public interest as private attorney
15 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
16 Defendants for violations of Labor Code sections 510 and 512(a).

17 45. Defendants, at all times relevant to this complaint, were employers or persons
18 acting on behalf of an employer(s) who violated Plaintiff Spencer’s and other aggrieved
19 employees’ rights by violating various sections of the California Labor Code as set forth
20 above.

21 46. As set forth below, Defendants have violated numerous provisions of both the
22 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
23 Order.

24 47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
25 2699.3(a), 2699.3(c), and 2699.5, Plaintiff Spencer, acting in the public interest as a private
26 attorney general, seeks assessment and collection of civil penalties for himself, all other
27 aggrieved employees, and the State of California against Defendants for violations of
28 California Labor Code sections 201, 202, 203, 204, 212, 226(a), 226.7, 450, 510, 512(a), 516,

1 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

2 **CLASS ACTION ALLEGATIONS**

3 48. Plaintiff Gomes brings this action on her own behalf, as well as on behalf of
4 each and all other persons similarly situated, and thus seeks class certification under
5 California Code of Civil Procedure section 382.

6 49. All claims alleged herein arise under California law for which Plaintiff Gomes
7 seeks relief authorized by California law.

8 50. Plaintiff Gomes' proposed class consists of and is defined as follows:

9 All persons who worked for Defendants as non-exempt, hourly-
10 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

11 51. Plaintiff Gomes' proposed Subclass consists of and is defined as follows:

12 All persons who worked for Defendants as non-exempt, hourly-
13 paid servers in California prior to March 2018 and were subject to
Defendants' tip-pooling policy ("Subclass").

14 52. Members of the Class are referred to herein as "class members."

15 53. Plaintiff Gomes reserves the right to redefine the Class and Subclass and to add
16 additional subclasses as appropriate based on further investigation, discovery, and specific
17 theories of liability.

18 54. There are common questions of law and fact as to class members that
19 predominate over questions affecting only individual members, including, but not limited to:

20 55. There are common questions of law and fact as to class members that
21 predominate over questions affecting only individual members, including, but not limited to:

- 22 (a) Whether Defendants required Plaintiff Gomes and class members to
23 work over eight (8) hours per day, over twelve (12) hours per day, or
24 over forty (40) hours per week and failed to pay all legally required
25 overtime compensation to Plaintiff Gomes and class members;
- 26 (b) Whether Defendants failed to pay Plaintiff Gomes and class members at
27 least minimum wages for all hours worked;
- 28 (c) Whether Defendants failed to provide Plaintiff Gomes and class

- 1 members with meal periods;
- 2 (d) Whether Defendants failed to authorize and permit Plaintiff Gomes and
- 3 class members to take rest periods;
- 4 (e) Whether Defendants failed to pay earned overtime wages, minimum
- 5 wages, and meal and rest period premiums due to Plaintiff Gomes and
- 6 class members upon termination;
- 7 (f) Whether Defendants failed to timely pay overtime wages, minimum
- 8 wages, and meal and rest period premiums to Plaintiff Gomes and class
- 9 members during their employment;
- 10 (g) Whether Defendants unlawfully implemented and imposed an
- 11 unreasonable tip-pooling policy on Plaintiff Gomes and Subclass
- 12 members;
- 13 (h) Whether Defendants failed to reimburse Plaintiff Gomes and class
- 14 members for necessary and required business-related expenditures
- 15 and/or losses incurred by them in the scope of their employment;
- 16 (i) Whether Defendants compelled and/or coerced Plaintiff Gomes and
- 17 class members to patronize their business;
- 18 (j) Whether Defendants engaged in unlawful and unfair business practices
- 19 in violation of California Business & Professions Code sections 17200,
- 20 *et seq.*; and,
- 21 (k) The appropriate amount of damages, restitution, or monetary penalties
- 22 resulting from Defendants' violations of California law.

23 56. There is a well-defined community of interest in the litigation and the class

24 members are readily ascertainable:

- 25 (a) Numerosity: The class members are so numerous that joinder of all
- 26 members would be unfeasible and impractical. The membership of the
- 27 entire class is unknown to Plaintiff Gomes at this time; however, the
- 28 class is estimated to be greater than one hundred (100) individuals and

1 the identity of such membership is readily ascertainable by inspection of
2 Defendants' employment records.

3 (b) Typicality: Plaintiff Gomes is qualified to, and will, fairly and
4 adequately protect the interests of each class member with whom she
5 has a well-defined community of interest, and Plaintiff Gomes' claims
6 (or defenses, if any) are typical of all class members as demonstrated
7 herein.

8 (c) Adequacy: Plaintiff Gomes is qualified to, and will, fairly and
9 adequately protect the interests of each class member with whom she
10 has a well-defined community of interest and typicality of claims, as
11 demonstrated herein. Plaintiff Gomes acknowledges that she has an
12 obligation to make known to the Court any relationship, conflicts or
13 differences with any class member. Plaintiff Gomes' attorneys, the
14 proposed class counsel, are versed in the rules governing class action
15 discovery, certification, and settlement. Plaintiff Gomes has incurred,
16 and throughout the duration of this action, will continue to incur costs
17 and attorneys' fees that have been, are, and will be necessarily expended
18 for the prosecution of this action for the substantial benefit of each class
19 member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort, and expense as compared with separate
23 lawsuits, and will avoid inconsistent outcomes because the same issues
24 can be adjudicated in the same manner and at the same time for the
25 entire class.

26 (e) Public Policy Considerations: Employers in the State of California
27 violate employment and labor laws every day. Current employees are
28 often afraid to assert their rights out of fear of direct or indirect

1 retaliation. Former employees are fearful of bringing actions because
2 they believe their former employers might damage their future
3 endeavors through negative references and/or other means. Class
4 actions provide the class members who are not named in the complaint
5 with a type of anonymity that allows for the vindication of their rights
6 while simultaneously protecting their privacy.

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**
9 **(Brought By Plaintiff Gomes Against all Defendants)**

10 57. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein
11 each and every allegation set forth above.

12 58. Labor Code section 1198 makes it illegal to employ an employee under
13 conditions of labor that are prohibited by the applicable wage order. California Labor Code
14 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
15 be the . . . standard conditions of labor for employees. The employment of any employee . . .
16 under conditions of labor prohibited by the order is unlawful.”

17 59. California Labor Code section 1198 and the applicable IWC Wage Order
18 provide that it is unlawful to employ persons without compensating them at a rate of pay
19 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
20 number of hours worked by the person on a daily or weekly basis.

21 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
22 were required to pay Plaintiff Gomes and class members working more than eight (8) hours in
23 a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
24 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
25 workweek.

26 61. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay Plaintiff Gomes and class members working more than twelve (12) hours in a
28 day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s

1 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
2 employee, including shift differential pay, incentive pay, and non-discretionary bonuses.

3 62. California Labor Code section 510 codifies the right to overtime compensation
4 at one and one-half times (1½) the regular rate of pay for hours worked in excess of eight (8)
5 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
6 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
7 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
8 in a day on the seventh (7th) day of work.

9 63. During the relevant time period, Defendants willfully failed to pay all overtime
10 wages owed to Plaintiff Gomes and class members. During the relevant time period, Plaintiff
11 Gomes and class members were not paid overtime premiums for all of the hours they worked
12 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess
13 of forty (40) hours in a week, because all hours worked were not recorded.

14 64. First, during the relevant time period, Defendants had, and continue to have, a
15 company-wide policy of staffing their restaurants strictly based on labor hours allotted by a
16 labor budget, which has resulted in and continues to result in chronic understaffing.
17 Defendants' company-wide understaffing of their restaurants led to a failure to provide
18 employees with adequate meal period coverage. As a result, Plaintiff Gomes and class
19 members were not always provided with uninterrupted 30-minute meal periods during shifts to
20 which they were entitled to receive a meal period. For example, Plaintiff Gomes' meal
21 periods were sometimes interrupted by management, coworkers, and customers to answer
22 work-related questions, but Plaintiff Gomes and class members were not compensated for this
23 time.

24 65. Second, during the relevant time period, Defendants had, and continue to have,
25 a strict policy prohibiting employees from accruing overtime, causing Plaintiff Gomes and
26 class members to perform duties off-the-clock without reporting their hours worked. As a
27 result, Plaintiff Gomes and class members were routinely required to perform tasks before and
28 after their scheduled shifts, on their off-days, and during unpaid meal periods. For example,

1 Plaintiff Gomes spent one (1) to two (2) hours per month off-the-clock creating the work
2 schedule for servers.

3 66. Third, Defendants had a company-wide practice of requiring Plaintiff Gomes
4 and class members to respond to work-related calls at all times using their personal cellular
5 phones, including when they were off-the-clock. Defendants insisted that Plaintiff Gomes and
6 class members promptly respond to work-related communications, even on their off days. For
7 example, Plaintiff Gomes had to respond to calls from Defendants' management and staff
8 regarding scheduling and/or inventory matters when she was off-the-clock at least four (4)
9 days per week, for at least three (3) to five (5) minutes per day.

10 67. Fourth, Defendants had a company-wide policy and/or practice of requiring
11 Plaintiff Gomes and class members to conduct or attend mandatory trainings at remote
12 locations, but did not compensate them for their time spent traveling to and from these
13 locations. For example, between February 1, 2016 and March 14, 2016, Plaintiff Gomes
14 drove approximately one (1) hour and twenty (20) minutes round-trip, four (4) days per week,
15 from her home in San Pedro, California to Laguna Hills, California for mandatory training on
16 Defendants' new restaurant operating system while her primary restaurant location in
17 Torrance, California underwent renovations. Further, Plaintiff Gomes was required to travel
18 to conduct new employees trainings at two (2) other restaurants owned by Defendants in Los
19 Angeles, California, and drove approximately two (2) hours round-trip, on at least four (4)
20 occasions, from her home in San Pedro, California to these locations.

21 68. Defendants knew or should have known that, as a result of these company-wide
22 practices and/or policies, Plaintiff Gomes and class members were performing assigned duties
23 during unpaid meal periods, before and after their shifts, and on their days off, and thereby
24 performing work for which they were not paid. Defendants further knew or should have
25 known that they did not compensate Plaintiff Gomes and class members for this off-the-clock
26 work.

27 69. Because Plaintiff Gomes and class members sometimes worked shifts of eight
28 (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work

1 qualified for overtime premium pay. Therefore, Plaintiff Gomes and class members were not
2 paid overtime wages for all of the overtime hours they actually worked.

3 70. Defendants' failure to pay Plaintiff Gomes and class members the balance of
4 overtime compensation as required by California law, violates the provisions of California
5 Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff
6 Gomes and class members are entitled to recover their unpaid overtime compensation, as well
7 as interest, costs, and attorneys' fees.

8 **SECOND CAUSE OF ACTION**

9 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 10 **Minimum Wages**

11 **(Brought By Plaintiff Gomes Against All Defendants)**

12 71. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein
13 each and every allegation set forth above.

14 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
15 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
16 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
17 fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as “the time
18 during which an employee is subject to the control of an employer, and includes all the time
19 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
20 Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”).

21 73. As stated, due to Defendants' use of labor budgets and resultant understaffing,
22 along with its practice of requiring employees to avoid accruing overtime, Plaintiff Gomes
23 and class members had their meal periods interrupted or were otherwise not relieved of all
24 duties during meal periods. As a further result of these policies and/or practices, Plaintiff
25 Gomes and class members had to perform scheduling and inventorying duties outside of their
26 scheduled shifts and were forced to work off-the-clock. Additionally, as stated, Defendants
27 had a company-wide policy and/or practice of requiring Plaintiff Gomes and other class
28 members to communicate with management and co-workers while off-the-clock using their

1 cellular phones regarding work-related matters. Lastly, Defendants had a company-wide
2 policy and/or practice of requiring Plaintiff Gomes and class members to conduct or attend
3 mandatory trainings at remote locations on their off-days, but did not compensate them for
4 their time spent traveling to and from these locations.

5 74. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
6 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
7 hours did not qualify for overtime premium payment, Defendants did not pay at least
8 minimum wages for those hours worked off-the-clock in violation of California Labor Code
9 sections 1182.12, 1194, 1197, 1197.1, and 1198.

10 75. Defendants' failure to pay Plaintiff Gomes and class members minimum wages
11 violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
12 California Labor Code section 1194.2, Plaintiff Gomes and class members are entitled to
13 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
14 thereon.

15 **THIRD CAUSE OF ACTION**

16 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

17 **Violations**

18 **(Brought By Plaintiff Gomes Against all Defendants)**

19 76. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein
20 each and every allegation set forth above.

21 77. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
22 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff
23 Gomes and class members' employment by Defendants.

24 78. At all relevant times herein set forth, California Labor Code sections 226.7,
25 512(a), 516, and 1119 provide that an employer may not require, cause, or permit an employee
26 to work for a period of more than five (5) hours per day without providing the employee with
27 a meal period of not less than thirty (30) minutes, except that if the total work period per day
28 of the employee is not more than six (6) hours, the meal period may be waived by mutual

1 consent of both the employer and the employee. Under California law, first meal periods must
2 start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004,
3 1041-1042 (Cal. 2012).

4 79. At all relevant times herein set forth, California Labor Code section 226.7 and
5 512(a) provide that no employer shall require an employee to work during any meal period
6 mandated by an applicable order of the IWC.

7 80. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
8 the applicable IWC Wage Order also require employers to provide a second meal break of not
9 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
10 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
11 hours worked is no more than twelve (12) hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal period was not waived.

13 81. During the relevant time period, as stated, Defendants had, and continue to
14 have, a company-wide policy and/or practice of understaffing restaurant locations due to the
15 utilization of labor budgets or caps, which resulted in a lack of meal period coverage and
16 prevented Plaintiff Gomes and class members from taking all timely, uninterrupted meal
17 periods to which they were entitled. In addition, Defendants had a company-wide policy
18 and/or practice of requiring Plaintiff Gomes to communicate with management and co-
19 workers using their cellular phones at all times, which also prevented Plaintiff Gomes and
20 class members from taking uninterrupted meal periods. As a result of these policies and/or
21 practices, Plaintiff Gomes and class members had their meal periods interrupted or shortened.
22 For example, Plaintiff Gomes suffered from interrupted or shortened meal periods due to
23 Defendants' management and staff contacting her regarding work-related issues while she was
24 clocked out for her unpaid meal periods.

25 82. At all times herein mentioned, Defendants knew or should have known that as a
26 result of their policies, Plaintiff Gomes and class members were required to perform some of
27 their assigned duties during meal periods and that Defendants did not pay meal period
28 premium wages when meal periods were interrupted. Defendants further knew or should have

1 known they did not pay Plaintiff Gomes and class members meal period premium wages when
2 meal periods were missed, interrupted by work, and/or taken late. Plaintiff Gomes and class
3 members did not sign valid meal break waivers on days that they were entitled to meal periods
4 and were not relieved of all duties.

5 83. Moreover, Defendants engaged in a systematic, company-wide practice and/or
6 policy of not paying meal period premiums owed when compliant meal periods were not
7 provided. As a result, Defendants failed to provide Plaintiff Gomes and class members
8 compliant meal periods in violation of California Labor Code sections 226.7, 512, and 516,
9 and failed to pay the full meal period premiums due.

10 84. Defendants' conduct violates the applicable IWC Wage Order, and California
11 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff Gomes and class members are
12 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
13 rate of compensation for each work day that the meal period was not provided.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Break Violations** 16 **(Brought By Plaintiff Gomes Against all Defendants)**

17 85. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein
18 each and every allegation set forth above.

19 86. At all relevant times herein set forth, the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff Gomes' and
21 class members' employment by Defendants.

22 87. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3½) hours.

28 88. At all relevant times, California Labor Code section 226.7 provides that no

1 employer shall require an employee to work during any rest period mandated by an applicable
2 order of the California IWC. To comply with its obligation to authorize and permit rest
3 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
4 employer must “relinquish any control over how employees spend their break time, and
5 relieve their employees of all duties — including the obligation that an employee remain on
6 call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security*
7 *Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

8 89. Pursuant to the applicable IWC Wage Order and California Labor Code
9 section 226.7(b), Plaintiff Gomes and class members are entitled to recover from Defendants
10 one (1) additional hour of pay at their regular rates of pay for each work day that a required
11 rest period was not authorized and permitted.

12 90. As with meal periods, Defendants’ systematic company-wide use of labor
13 budgets and resultant understaffing also prevented Plaintiff Gomes and class members from
14 being relieved of all duties to take compliant rest periods. As a result, Plaintiff Gomes and
15 class members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of
16 10 hours, without receiving all uninterrupted ten (10) minute rest breaks to which they were
17 entitled. During her employment, Plaintiff Gomes was not authorized and permitted to take
18 full 10-minute rest periods and instead had her rest periods interrupted by Defendants’
19 management, coworkers, or work-related calls to her cellular phone.

20 91. Additionally, upon information and belief, Defendants maintained and
21 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
22 Gomes and class members remain on Defendants’ premises during their rest periods. Upon
23 information and belief, Defendants’ company-wide on-premises rest period policy prevented
24 Plaintiff Gomes and class members from being relieved of all duties for rest periods and
25 caused them to perform work during rest periods.

26 92. Defendants have also engaged in a company-wide practice and/or policy to not
27 pay rest period premiums owed when compliant rest periods are not permitted or authorized.
28 As a result, Defendants failed to pay Plaintiff Gomes and class members the rest period

1 premiums due, in violation of Labor Code section 226.7 and the applicable IWC Wage Order.

2 93. Defendants' conduct violates the applicable IWC Wage Order and California
3 Labor Code sections 226.7, 516, and 1198. Plaintiff Gomes and class members are therefore
4 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
5 rate of compensation for each work day that a compliant rest period was not authorized and
6 permitted.

7 **FIFTH CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon** 9 **Termination**

10 **(Brought By Plaintiff Gomes Against all Defendants)**

11 94. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein
12 each and every allegation set forth above.

13 95. This cause of action is dependent upon, and wholly derivative of, the overtime
14 wages and minimum wages that were not timely paid to Plaintiff Gomes and those class
15 members no longer employed by Defendants upon their termination.

16 96. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
17 that if an employer discharges an employee, the wages earned and unpaid at the time of
18 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
19 her employment, his or her wages shall become due and payable not later than seventy-two
20 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
21 his or her intention to quit, in which case the employee is entitled to his or her wages at the
22 time of quitting.

23 97. During the relevant time period, Defendants willfully failed to pay Plaintiff
24 Gomes and class members who are no longer employed by Defendants the earned and unpaid
25 wages set forth above, including but not limited to, overtime wages, minimum wages, and
26 meal and/or rest period premium wages either at the time of discharge, or within seventy-two
27 (72) hours of their leaving Defendants' employ.

28 98. Defendants' failure to pay Plaintiff Gomes and class members who are no

1 longer employed by Defendants their wages earned and unpaid at the time of discharge, or
2 within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code
3 sections 201 and 202. Plaintiff Gomes and class members are therefore entitled to recover
4 from Defendants the statutory penalty wages for each day they were not paid, at their regular
5 rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

6 **SIXTH CAUSE OF ACTION**

7 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 8 **Employment**

9 **(Brought By Plaintiff Gomes Against all Defendants)**

10 99. Plaintiff Gomes incorporate by reference and re-allege as if fully stated herein
11 each and every allegation set forth above.

12 100. At all times relevant herein set forth, Labor Code section 204 provides that all
13 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
14 days, inclusive, of any calendar month, other than those wages due upon termination of an
15 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
16 the month during which the labor was performed.

17 101. At all times relevant herein, Labor Code section 204 provides that all wages
18 earned by any person in any employment between the sixteenth (16th) and the last day,
19 inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
21 month.

22 102. At all times relevant herein, Labor Code section 204 provides that all wages
23 earned for labor in excess of the normal work period shall be paid no later than the payday for
24 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
25 204 provides that the requirements of this section are deemed satisfied by the payment of
26 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
27 seven (7) calendar days following the close of the payroll period.

28 103. During the relevant time period, Defendants willfully failed to pay Plaintiff

1 Gomes and class members all wages due including, but not limited to, overtime wages,
2 minimum wages, meal and rest period premium wages, within the time periods specified by
3 California Labor Code section 204.

4 104. Defendants' failure to pay Plaintiff Gomes and class members all wages due
5 violates Labor Code section 204. Plaintiff Gomes and class members are therefore entitled to
6 recover from Defendants the statutory penalty wages pursuant to California Labor Code
7 section 210

8 **SEVENTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 2802 – Unpaid Business-Related Expenses**

10 **(Brought By Plaintiff Gomes Against all Defendants)**

11 105. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein
12 each and every allegation set forth above.

13 106. At all times herein set forth, California Labor Code section 2802 provides that
14 an employer must reimburse employees for all necessary expenditures and losses incurred by
15 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
16 to prevent employers from passing off their cost of doing business and operating expenses on
17 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
18 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: "[w]hen tools or
19 equipment are required by the employer or are necessary to the performance of a job, such
20 tools and equipment shall be provided and maintained by the employer, except that an
21 employee whose wages are at least two (2) times the minimum wage provided herein may be
22 required to provide and maintain hand tools and equipment customarily required by the trade
23 or craft."

24 107. During the relevant time period, Defendants, on a company-wide basis,
25 required that Plaintiff Gomes and class members use their own personal cellular phones and
26 cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs
27 of their work-related cellular phone expenses. Plaintiff Gomes and class members were
28 required to use their personal cellular phones to complete their work-related tasks, such as

1 scheduling shifts and assessing inventory. Although Defendants required Plaintiff Gomes and
2 class members to regularly utilize their personal cellular phones to carry out their work-related
3 responsibilities, Defendants failed to fully reimburse them for this cost.

4 108. Defendants also mandated, on a company-wide basis, that Plaintiff Gomes and
5 class members purchase and maintain uniforms and aprons in a clean, unstained condition,
6 which they were required to wear at work. Defendants had a company-wide policy of
7 requiring employees to purchase uniform shirts and aprons directly from the company, at a
8 cost of \$10 per uniform shirt and \$2 per apron. During her employment, Plaintiff Gomes
9 purchased approximately four (4) to five (5) uniform shirts from Defendants per year to
10 comply with Defendants' policy that Plaintiff Gomes and class members wear clean,
11 unstained uniforms and aprons at all times. Plaintiff Gomes estimates that she spent
12 approximately \$160 on uniform shirts. Although Defendants required Plaintiff Gomes and
13 class members to purchase these items for work, Defendants failed to reimburse them for this
14 cost.

15 109. Thus, Defendants engaged in a systematic, company-wide policy to not
16 reimburse Plaintiff Gomes and class members for necessary business expenses. Defendants
17 could have provided Plaintiff Gomes and class members with the actual tools for use on the
18 job, including company phones and uniforms, or reimbursed employees for their cellular
19 phone and uniform expenses, but instead, Defendants passed these operating costs off onto
20 Plaintiff Gomes and class members.

21 110. Defendants' company-wide policy and/or practice of passing its operating costs
22 on to Plaintiff Gomes and class members is in violation of California Labor Code section
23 2802. Defendants have intentionally and willfully failed to fully reimburse Plaintiff Gomes
24 and class members for necessary business-related expenses and costs.

25 111. Plaintiff Gomes and class members are therefore entitled to recover from
26 Defendants their business-related expenses incurred during the course and scope of their
27 employment, plus interest.
28

1 **EIGHTH CAUSE OF ACTION**

2 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Brought by Plaintiff Spencer Against all Defendants)**

4 112. Plaintiff Spencer incorporates by reference and re-alleges as if fully stated
5 herein each and every allegation set forth above.

6 113. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff Spencer to
7 recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor
8 Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204,
9 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
10 2699.3(c) permits aggrieved employees, including Plaintiff Spencer, to recover civil penalties
11 for violations of those Labor Code sections not found in section 2699.5, including sections
12 1182.12.

13 114. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
16 wage order for Defendants’ failure to compensate Plaintiff Spencer and
17 other aggrieved employees with all required overtime pay and failure to
18 properly calculate the overtime rates paid to Plaintiff Spencer and other
19 aggrieved employees, as alleged herein;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
21 applicable IWC wage order for Defendants’ failure to compensate
22 Plaintiff Spencer and other aggrieved employees with at least minimum
23 wages for all hours worked as alleged herein;
- 24 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
25 applicable IWC wage order for Defendants’ failure to provide Plaintiff
26 Spencer and other aggrieved employees with meal periods, as alleged
27 herein;
- 28 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable

IWC wage order for Defendants' failure to authorize and permit Plaintiff Spencer and other aggrieved employees to take rest periods, as alleged herein;

(e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff Spencer and other aggrieved employees, as alleged herein;

(f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;

(g) Violation of Labor Code section 204 for failure to timely pay all earned wages during employment as alleged herein;

(h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;

(i) Violation of Labor Code section 212 for failing to issuing an instrument or acknowledgement of indebtedness in payment of wages due with sufficient funds at time of issuance;

(j) Violation of Labor Code 450 for compelling and/or coercing Plaintiff Spencer and aggrieved employees to patronize Defendants' business, as set forth below;

(k) Violation of Labor Code section 1198 for failing to provide change rooms to Plaintiff Spencer and other aggrieved employees, as set forth below;

(l) Violation of Labor Code section 1198 for failing to provide suitable resting facilities to Plaintiff Spencer and other aggrieved employees, as set forth below;

(m) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiff Spencer and other aggrieved employees, as set forth below;

- 1 (n) Violation of Labor Code section 1198 and the applicable IWC wage
2 order for failure to pay reporting time pay when Plaintiff Spencer and
3 other aggrieved employees were put to work for less than half of their
4 regular scheduled shifts, as set forth below;
- 5 (o) Violation of Labor Code section 1198 and the applicable IWC wage
6 order for failure to pay split-shift premiums when Plaintiff Spencer and
7 other aggrieved employees returned to work for an additional shift in the
8 same day, after having been clocked out for more than an hour, as set
9 forth below; and
- 10 (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
11 Spencer and other aggrieved employees for all business expenses
12 necessarily incurred, as alleged herein;

13 **FAILURE TO PAY OVERTIME**

14 115. Labor Code section 1198 makes it illegal to employ an employee under
15 conditions of labor that are prohibited by the applicable wage order. California Labor Code
16 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
17 be the . . . standard conditions of labor for employees. The employment of any employee . . .
18 under conditions of labor prohibited by the order is unlawful.”

19 116. California Labor Code section 1198 and the applicable IWC Wage Order
20 provide that it is unlawful to employ persons without compensating them at a rate of pay
21 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
22 number of hours worked by the person on a daily or weekly basis.

23 117. Specifically, the applicable IWC Wage Order provides that Defendants are and
24 were required to pay Plaintiff Spencer and other aggrieved employees working more than
25 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
26 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
27 hours in a workweek.

28 118. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff Spencer and other aggrieved employees working more than twelve
2 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
3 An employee's regular rate of pay includes all remuneration for employment paid to, or on
4 behalf of, the employee, including non-discretionary bonuses and incentive pay

5 119. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half times (1½) the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
8 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
9 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh (7th) day of work.

11 120. During the relevant time period, Defendants willfully failed to pay all overtime
12 wages owed to Plaintiff Spencer and other aggrieved employees. During the relevant time
13 period, Plaintiff Spencer and other aggrieved employees were not paid overtime premiums for
14 all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
15 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
16 not recorded.

17 121. First, during the relevant time period, Defendants had, and continue to have, a
18 company-wide policy of staffing their restaurants strictly based on labor hours allotted by a
19 labor budget, which has resulted in and continues to result in chronic understaffing.
20 Defendants' company-wide understaffing of their restaurants led to a failure to provide
21 employees with adequate meal period coverage. As a result, Plaintiff Spencer and other
22 aggrieved employees were not always provided with uninterrupted 30-minute meal periods
23 during shifts to which they were entitled to receive a meal period. For example, Plaintiff
24 Spencer's meal periods were interrupted for ten (10) to fifteen (15) minutes due to requests by
25 managers and supervisors to assist with an influx of customers. However, Plaintiff Spencer and
26 other aggrieved employees were not compensated for this time.

27 122. Second, during the relevant time period, Defendants had, and continue to have,
28 a strict policy prohibiting employees from accruing overtime, causing Plaintiff Spencer and

1 other aggrieved employees to perform duties off-the-clock without reporting their hours
2 worked. As a result, Plaintiff Spencer and other aggrieved employees were routinely required
3 to perform tasks before and after their scheduled shifts, on their off-days, and during unpaid
4 meal periods. For example, three (3) times a week, Plaintiff Spencer spent thirty (30) minutes
5 to one (1) hour working off-the-clock setting up tables and filling condiment bottles before
6 clocking in for his scheduled shift. Additionally, one (1) to three (3) times a week, Plaintiff
7 Spencer spent thirty (30) minutes to one (1) hour working off-the-clock after clocking out
8 from his scheduled shift completing assigned tasks, such as bussing tables and making drink
9 orders. Furthermore, five (5) times a week, Plaintiff Spencer spent approximately five (5) to
10 ten (10) minutes working off-the-clock taking out the garbage after clocking out from his
11 scheduled shift.

12 123. Third, Defendants had a company-wide practice of requiring Plaintiff Spencer
13 and other aggrieved employees to respond to work-related messages at all times using their
14 personal cellular phones, including when they were off-the-clock. Defendants insisted that
15 Plaintiff Spencer and other aggrieved employees promptly respond to work-related
16 communications, even outside their scheduled shifts or during unpaid meal periods. For
17 example, at least once a week, Plaintiff Spencer had to respond to messages sent through
18 GroupMe, the group text messaging app Defendants required Plaintiff Spencer and other class
19 members to download to their personal phones. These messages were sent while Plaintiff
20 Spencer was off-the-clock, either after a scheduled shift or during an unpaid meal break.
21 Plaintiff Spencer would spend approximately a total of one (1) to two (2) minutes reading and
22 responding to these messages every time he worked.

23 124. Fourth, Defendants had a company-wide policy and/or practice of requiring
24 other aggrieved employees to conduct or attend mandatory trainings at remote locations, but
25 did not compensate them for their time spent traveling to and from these locations. For
26 example, Defendants would schedule other aggrieved employees for mandatory job training
27 meetings at remote locations, yet Defendants did not compensate them for their time spent
28 traveling to and from these locations.

1 125. Defendants knew or should have known that, as a result of these company-wide
2 practices and/or policies, Plaintiff Spencer and other aggrieved employees were performing
3 assigned duties during unpaid meal periods, before and after their shifts, and on their days off,
4 and thereby performing work for which they were not paid. Defendants further knew or
5 should have known that they did not compensate Plaintiff Spencer and other aggrieved
6 employees for this off-the-clock work.

7 126. Because Plaintiff Spencer and other aggrieved employees sometimes worked
8 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-
9 the-clock work qualified for overtime premium pay. Therefore, Plaintiff Spencer and other
10 aggrieved employees were not paid overtime wages for all of the overtime hours they actually
11 worked.

12 127. Furthermore, Defendants did not pay other aggrieved employees the correct
13 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
14 wage, Defendants paid other aggrieved employees incentive pay, nondiscretionary bonuses,
15 and/or other forms of remuneration. However, in violation of the California Labor Code,
16 Defendants failed to incorporate all remunerations, including incentive pay, nondiscretionary
17 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
18 purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved
19 employees worked overtime and received these other forms of pay, Defendants failed to pay
20 all overtime wages by paying a lower overtime rate than required.

21 128. Defendants' failure to pay Plaintiff Spencer and other aggrieved employees the
22 balance of overtime compensation and failure to include all applicable remuneration in
23 calculating the regular rate of pay for overtime pay, as required by California law, violates the
24 provisions of California Labor Code sections 510 and 1198. Plaintiff Spencer and other
25 aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections
26 558 and/or 2699(a), (f), and (g)

27 **FAILURE TO PAY MINIMUM WAGES**

28 129. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and

1 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
2 to be paid to employees, and the payment of a wage less than the minimum so fixed is
3 unlawful. Compensable work time is defined in Wage Order No. 5 as “the time during which
4 an employee is subject to the control of an employer, and includes all the time the employee is
5 suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, §
6 11050(2)(K) (defining “Hours Worked”).

7 130. As set forth above, due to Defendants’ use of labor budgets and resultant
8 understaffing, along with its practice of requiring employees to avoid accruing overtime,
9 Plaintiff Spencer and other aggrieved employees had their meal periods interrupted or were
10 otherwise not relieved of all duties during meal periods. As a further result of these policies
11 and/or practices, Plaintiff Spencer and other aggrieved employees had to perform scheduling
12 and inventorying duties outside of their scheduled shifts and were forced to work off-the-
13 clock. Additionally, as stated, Defendants had a company-wide policy and/or practice of
14 requiring Plaintiff Spencer and other aggrieved employees to communicate with management
15 and co-workers while off-the-clock using their cellular phones regarding work-related matters.
16 Lastly, Defendants had a company-wide policy and/or practice of requiring other aggrieved
17 employees to conduct or attend mandatory trainings at remote locations on their off-days, but
18 did not compensate them for their time spent traveling to and from these locations.

19 131. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
20 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
21 hours did not qualify for overtime premium payment, Defendants did not pay at least
22 minimum wages for those hours worked off-the-clock in violation of California Labor Code
23 sections 1182.12, 1194, 1197, and 1198.

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 132. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
26 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff
27 Spencer and other aggrieved employees’ employment by Defendants.

28 133. At all relevant times herein set forth, California Labor Code section 512(a)

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

8 134. At all relevant times herein set forth, California Labor Code section 226.7,
9 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
10 meal period mandated by an applicable order of the IWC.

11 135. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
12 the applicable IWC Wage Order also require employers to provide a second meal break of not
13 less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
14 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
15 hours worked is no more than twelve (12) hours, the second meal period may be waived by
16 mutual consent of the employer and the employee only if the first meal period was not waived.

17 136. An employer's obligation to provide a meal period is only "triggered" when the
18 employer "employs an employee for a work period of more than five hours per day." *Brinker*,
19 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five
20 hours, its meal break obligation is triggered."). [A]fter the meal break obligation is
21 triggered... an employer is put to a choice: it must (1) afford an off-duty meal period; (2)
22 consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain
23 written agreement to an on-duty meal period if circumstances permit. Failure to do one of
24 these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7;
25 Wage Order No. 5, subd. 11(A), (B)). Under Labor Code section 512 (a) and the applicable
26 IWC Wage Order, employees may waive their second meal periods only if they took their first
27 meal period.

28 137. During the relevant time period, as stated above, Defendants had, and continue

1 to have, a company-wide policy and/or practice of understaffing restaurant locations due to
2 the utilization of labor budgets or caps, which resulted in a lack of meal period coverage and
3 prevented Plaintiff Spencer and other aggrieved employees from taking all timely,
4 uninterrupted meal periods to which they were entitled. As a result, Plaintiff Spencer and
5 other aggrieved employees had to work through part or all of their meal periods, had their
6 meal periods interrupted, and/or had to wait extended periods of time before taking meal
7 periods. For example, twice a week, Plaintiff Spencer's meal periods were interrupted for ten
8 (10) to fifteen (15) minutes due to requests by managers and supervisors to assist with an
9 influx of customers. As another example, Plaintiff Spencer was sometimes made to work over
10 five (5) hours straight before Defendants' managers permitted him to take his meal period.

11 138. In addition, Defendants had a company-wide policy and/or practice of requiring
12 Plaintiff Spencer and other aggrieved employees to carry their personal cellular phones at all
13 times to respond to communications from managers and supervisors using their cellular
14 phones, which also prevented Plaintiff Spencer and other aggrieved employees from taking
15 uninterrupted meal periods. As a result of these policies and/or practices, Plaintiff Spencer
16 and other aggrieved employees had their meal periods interrupted or shortened. For example,
17 Plaintiff Spencer's supervisors and manager contacted him through the GroupMe app during
18 unpaid meal periods regarding work-related matters, including instructions to return to work.

19 139. Defendants knew or should have known that as a result of its policies, that
20 Plaintiff Spencer and other aggrieved employees were not actually relieved of all duties to
21 take timely, uninterrupted meal periods. Despite this, Defendants did not pay Plaintiff
22 Spencer and other aggrieved employees meal period premium wages when they were missed,
23 late, short, and/or interrupted. As a result, Plaintiff Spencer and other aggrieved employees
24 worked through some or all of their meal periods, had their meal periods interrupted and/or
25 cut short to return to work, and/or waited extended periods of time before taking meal periods.

26 140. Furthermore, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Alternatively, to the extent that Defendants did pay other aggrieved employees meal period

premium wages, it did so at the incorrect rates. Because Defendants did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, Defendants any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

FAILURE TO PERMIT AND AUTHORIZE REST PERIODS

141. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff Spencer's and other aggrieved employee's employment by Defendants.

142. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

143. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

144. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff Spencer and other aggrieved employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

145. First, as with meal periods, Defendants' requirement that employees carry their

1 personal cellular phones at all times in order to respond to communications from supervisors
2 and managers prevented Plaintiff Spencer and other aggrieved employees from being relieved
3 of all duty in order to take compliant rest periods. As a result, Plaintiff Spencer and other
4 aggrieved employees would frequently work shifts in excess of 3.5 hours, in excess of 6
5 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest
6 periods to which they were entitled. For example, Plaintiff Spencer's rest periods were
7 interrupted three (3) times per week by messages from his managers and supervisors requesting
8 him to bus tables.

9 146. Second, as with meal periods, Defendants' systematic company-wide use of
10 labor budgets and resultant understaffing also prevented Plaintiff Spencer and other aggrieved
11 employees from being relieved of all duties to take compliant rest periods. As a result,
12 Plaintiff Spencer and other aggrieved employees worked shifts in excess of 3.5 hours, in
13 excess of 6 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10)
14 minute rest breaks to which they were entitled. During his employment, Plaintiff Spencer
15 would work over four (4) hours without being authorized and permitted to take his first 10-minute
16 rest period. As a further example, Plaintiff Spencer missed three (3) rest breaks entirely during his
17 employment.

18 147. Additionally, upon information and belief, Defendants maintained and
19 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
20 Spencer and other aggrieved employees remain on Defendants' premises during their rest
21 periods. Upon information and belief, Defendants' company-wide on-premises rest period
22 policy prevented Plaintiff Spencer and other aggrieved employees from being relieved of all
23 duties for rest periods and caused them to perform work during rest periods.

24 148. Defendants have also engaged in a company-wide practice and/or policy to not
25 pay rest periods premiums owed when compliant rest periods are not authorized and
26 permitted. As a result, Plaintiff Spencer and other aggrieved employees were denied rest
27 periods and Defendants failed to pay Plaintiff Spencer and other aggrieved employees the full
28 rest period premiums due, in violation of Labor Code section 226.7 and the applicable IWC

1 Wage Order. Alternatively, to the extent that Defendants did pay rest period premium wages
2 to other aggrieved employees, it did so at the incorrect rates. Because Defendants did not
3 properly calculate other aggrieved employees' regular rates of pay by including all
4 remunerations, such as non-discretionary bonuses and/or incentive pay, any premiums paid for
5 rest period violations were also paid at an incorrect rate and resulted in an underpayment of
6 rest period premium wages.

7 **FAILURE TO FURNISH COMPLETE AND ACCURATE WAGE STATEMENTS**
8 **AND/OR MAINTAIN ACCURATE RECORDS**

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

14 150. During the relevant time period, Defendants have knowingly and intentionally
15 provided Plaintiff Spencer and other aggrieved employees with uniform, incomplete, and
16 inaccurate wage statements. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
17 226(a)(5), and 226(a)(9). Because Defendants deducted time from Plaintiff Spencer's and
18 other aggrieved employees' records for meal periods that were interrupted or missed (and
19 therefore time for which they should have been paid), and did not record the time Plaintiff
20 Spencer and other aggrieved employees spent working off-the-clock, Defendants did not list
21 the correct amount of gross and net wages earned by Plaintiff Spencer and other aggrieved
22 employees in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same
23 reason, Defendants failed to list the correct number of total hours worked by Plaintiff Spencer
24 and other aggrieved employees, in violation of section 226(a)(2), and failed to list the
25 applicable hourly rates of pay in effect during the pay period and the corresponding accurate
26 number of hours worked at each hourly rate, in violation of section 226(a)(9). The wage
27 statement deficiencies also include, among other things, failing to list all deductions; failing to
28 list the correct name and address of the legal entity that is the employer; and/or failing to state

1 all hours worked as a result of not recording or stating the hours they worked off-the-clock.

2 151. California Labor Code section 1174(d) provides that “[e]very person employing
3 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
4 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
5 plants or establishments at which employees are employed, payroll records showing the hours
6 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
7 applicable piece rate paid to, employees employed at the respective plants or
8 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
9 Defendants willfully failed to maintain accurate payroll records for Plaintiff Spencer and other
10 aggrieved employees showing the daily hours they worked and the wages paid thereto as a
11 result of failing to record the off-the-clock hours that they worked.

12 152. California Labor Code section 1198 provides that the maximum hours of work
13 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
14 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
15 employment of any employees for longer hours than those fixed by the order or under
16 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
17 Wage Order, employers are required to keep accurate time records showing when the
18 employee begins and ends each work period and meal period. At all relevant times,
19 Defendants failed, on a company-wide basis, to keep records of meal period start and stop
20 times for Plaintiff Spencer and other aggrieved employees in violation of section 1198. As
21 stated, Defendants engaged in a company-wide practice and/or policy of falsifying Plaintiff
22 Spencer’s and other aggrieved employees’ time records by recording that compliant meal
23 periods were taken regardless of if or when meal periods were actually taken, and thereby
24 failed to keep accurate records of meal start and end times for Plaintiff Spencer and other
25 aggrieved employees.

26 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION AND/OR**
27 **RESIGNATION**

28 153. At all times relevant herein set forth, Labor Code sections 201 and 202 provide

1 that if an employer discharges an employee, the wages earned and unpaid at the time of
2 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
3 her employment, his or her wages shall become due and payable not later than seventy-two
4 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
5 his or her intention to quit, in which case the employee is entitled to his or her wages at the
6 time of quitting.

7 154. During the relevant time period, Defendants willfully failed to pay Plaintiff
8 Spencer and other aggrieved employees who are no longer employed by Defendants the
9 earned and unpaid wages set forth above, including but not limited to, overtime wages,
10 minimum wages, and meal and/or rest period premium wages either at the time of discharge,
11 or within seventy-two (72) hours of their leaving Defendants' employ.

12 **FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT**

13 155. At all times relevant herein set forth, Labor Code section 204 provides that all
14 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
15 days, inclusive, of any calendar month, other than those wages due upon termination of an
16 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
17 the month during which the labor was performed.

18 156. At all times relevant herein, Labor Code section 204 provides that all wages
19 earned by any person in any employment between the sixteenth (16th) and the last day,
20 inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
22 month.

23 157. At all times relevant herein, Labor Code section 204 provides that all wages
24 earned for labor in excess of the normal work period shall be paid no later than the payday for
25 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
26 204 provides that the requirements of this section are deemed satisfied by the payment of
27 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
28 seven (7) calendar days following the close of the payroll period.

1 158. During the relevant time period, Defendants willfully failed to pay Plaintiff
2 Spencer and other aggrieved employees all wages due including, but not limited to, overtime
3 wages, minimum wages, and meal and rest period premium wages within the time periods
4 specified by California Labor Code section 204.

5 **FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**

6 159. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or
12 equipment are required by the employer or are necessary to the performance of a job, such
13 tools and equipment shall be provided and maintained by the employer, except that an
14 employee whose wages are at least two (2) times the minimum wage provided herein may be
15 required to provide and maintain hand tools and equipment customarily required by the trade
16 or craft.”

17 160. First, during the relevant time period, Defendants, on a company-wide basis,
18 required that Plaintiff Spencer and other aggrieved employees use their own personal cellular
19 phones and cellular data to carry out their job duties, but Defendants failed to reimburse them
20 for the costs of their work-related cellular phone expenses. Plaintiff Spencer and other
21 aggrieved employees were required to use their personal cellular phones to complete their
22 work-related tasks, such as responding to communications from supervisors and managers.
23 Although Defendants required Plaintiff Spencer and other aggrieved employees to regularly
24 utilize their personal cellular phones to carry out their work-related responsibilities,
25 Defendants failed to fully reimburse them for this cost.

26 161. Second, during the relevant time period, Defendants had a written policy of
27 requiring Plaintiff Spencer and other aggrieved employees to report to work in clean,
28 unstained uniforms and aprons under threat of discipline. As a result, Plaintiff Spencer and

1 other aggrieved employees incurred expenses by either cleaning uniforms and aprons
2 frequently or purchasing clean, unstained uniforms from Defendants. For example, Plaintiff
3 Spencer was given approximately two (2) uniform sets consisting of a shirt, an apron, and a
4 pair of black slacks at the start of his employment. Because Plaintiff Spencer was often
5 scheduled to work four (4) to five (5) days in a week, Plaintiff Spencer was required to wash
6 his uniform set three (3) times a week in order to keep it clean—much more frequently than he
7 would otherwise do his laundry. Although Defendants required Plaintiff Spencer and other
8 aggrieved employees to report to work in clean, unstained uniforms, Defendants failed to
9 reimburse them for these costs.

10 162. Thus, Defendants engaged in a systematic, company-wide policy to not
11 reimburse Plaintiff Spencer and other aggrieved employees for necessary business expenses.
12 Defendants could have provided Plaintiff Spencer and other aggrieved employees with the
13 actual tools for use on the job, including company phones and an adequate number of
14 uniforms, or reimbursed employees for their cellular phone and uniform expenses, but instead,
15 Defendants passed these operating costs off onto Plaintiff Spencer and other aggrieved
16 employees.

17 **FAILURE TO PAY WAGES NEGOTIABLE AND PAYABLE IN CASH ON DEMAND**

18 163. California Labor Code section 212 prohibits employers from issuing any
19 instruments for the payment of wages, or acknowledgement of indebtedness, unless such
20 instruments are negotiable and payable in cash on demand and without discount. Further, section
21 212 requires the instrument have, “at the time of its issuance and for a reasonable time thereafter,
22 which must be at least 30 days, the maker or drawer has sufficient funds in, or credit,
23 arrangement, or understanding with the drawee for its payment.”

24 164. On information and belief, Defendants have a company-wide practice of
25 issuing instruments, or acknowledgements of indebtedness, to employees without sufficient
26 funds in at the time of issuance. For example, Defendants provided Plaintiff Spencer with his
27 final paycheck on April 25, 2019. When Plaintiff Spencer attempted to deposit this check in
28 his banking account at his credit union, the check did not clear. As a result, Plaintiff Spencer’s

1 credit union charged him overdraft fees when charges were paid from his account without the
2 funds he had relied upon from his check from Defendants. Days later, Plaintiff Spencer
3 received a “Return to Maker” letter from his credit union, with the check enclosed

4 165. As a result of Defendants’ company-wide policy and/or practice of issuing
5 instruments to employees without sufficient funds in at the time of issuance, Plaintiff Spencer
6 and/or other aggrieved employees suffered overdraft fees when charges were paid from their
7 accounts without the funds they had relied upon from their Defendants’ checks. Defendants’
8 failure to issue instruments with sufficient funds in to Plaintiff Spencer and/or other aggrieved
9 employees violates California Labor Code section 212.

10 **UNLAWFUL FORCED PATRONAGE**

11 166. At all relevant times herein, California Labor Code section 450 provides that an
12 employer may not “compel or coerce any employee, or applicant for employment, to patronize
13 his or her employer, or any other person, in the purchase of anything of value.” An employer
14 violates section 450 by forcing an employee to patronize the employer’s business in the purchase
15 of a company-provided good.

16 167. Defendants have, and continue to have, a company-wide policy of requiring
17 employees to purchase food directly from the company in order to sit within the dining area of
18 the restaurant during meal periods. Furthermore, as alleged below, Defendants do not provide
19 suitable resting areas for employees, thus, employees are coerced to purchase food from
20 Defendants in order to rest during work hours at their restaurant. As such, the only times Plaintiff
21 Spencer and other aggrieved employees were allowed to sit and relax within the dining area of
22 the restaurant was when they purchased food directly from the company. For example, once,
23 Plaintiff Spencer was allowed to sit and rest in Defendants’ dining area after he purchased a fried
24 squid entrée during a meal period. Defendants’ conduct of compelling and/or coercing Plaintiff
25 Spencer and other aggrieved employees to purchase goods from them violates California Labor
26 Code section 450.

27 **FAILURE TO PROVIDE ADEQUATE CHANGING FACILITIES**

28 168. California Code of Regulations, Title 8, section 11050(13)(A) provides that

1 “[w]hen the occupation requires a change of clothing, change rooms or equivalent space shall
2 be provided in order that employees may change their clothing in reasonable privacy and
3 comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and
4 shall be kept clean.”

5 169. Defendants’ California restaurants are generally similar in their layout and
6 design and there was, and continues to be, space that allows for a changing room or equivalent
7 space that employees may change their clothing in reasonable privacy and comfort Defendants
8 could have provided Plaintiff Spencer and other aggrieved employees with a change room or
9 equivalent space in its restaurant, with reasonable or no modification, but instead denied, and
10 continues to deny, employees these changing room and forced Plaintiff Spencer and other
11 aggrieved employees to change into uniforms in the restrooms of the restaurant.

12 170. Defendants did not provide Plaintiff Spencer and other aggrieved employees
13 with change rooms or any equivalent to allow them to change into uniforms in reasonable
14 privacy and comfort. Furthermore, due to Defendants’ attendance policy, Plaintiff Spencer
15 and other aggrieved employees were expected to be in uniform and prepared to begin work at
16 the start of their scheduled shifts. In other words, to the extent Plaintiff Spencer and other
17 aggrieved employees were required to wear uniforms and were unable to change into the
18 uniform prior to reporting to work, Defendants denied them access to a reasonably private and
19 comfortable changing area outside of the restaurant’s restrooms. For example, once, when
20 Plaintiff Spencer arrived to work at the beginning of his scheduled shift in his street clothing,
21 he was forced to use Defendants’ restroom in order to change into his uniform. Moreover,
22 Defendants did not inform Plaintiff Spencer and other aggrieved employees of their rights to a
23 changing room or area under California law.

24 171. As a result of Defendants’ company-wide policy and/or practice of failing to
25 provide adequate change room facilities to employees at any time, Plaintiff Spencer and other
26 aggrieved employees were forced to change into their required uniforms in Defendants’
27 restroom. Defendants’ failure to provide change rooms to Plaintiff Spencer and other
28 aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-

2001, Section 13(A).

FAILURE TO PROVIDE SUITABLE SEATING

172. California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

173. Defendants’ California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during rest or meal periods. Defendants could have provided Plaintiff Spencer and other aggrieved employees with a resting facility within its restaurants, with reasonable or no modification, but instead denied, and continues to deny, employees areas to rest. As a result, Plaintiff Spencer and other aggrieved employees were forced to adjust to unrestful areas, such as standing in active work areas during rest periods, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as utilizing the tables and chairs of nearby business during meal periods.

174. Defendants did not provide Plaintiff Spencer and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Plaintiff Spencer and other aggrieved employees are legally allowed to forgo assigned tasks, as in during a rest or meal period, Defendants denied them any area within their restaurants to cease work and recover. For example, Plaintiff Spencer was not allowed to sit in the dining area during working hours and while in uniform, unless he purchased and ate a meal prepare by Defendants during a meal period. Moreover, Defendants did not inform Plaintiff Spencer and other aggrieved employees of their rights to resting facilities under California law.

175. As a result of Defendants’ company-wide policy and/or practice of denying employees any area to rest within their restaurants, unless the employee patronized the business, and company-wide failure to provide resting facilities in their restaurants, Plaintiff Spencer and other aggrieved employees were forced to adjust to unrestful areas or search for facilities outside their restaurants to cease work and recover. Defendants’ failure to provide

1 suitable resting facilities to Plaintiff Spencer and other aggrieved employees violates
2 California Labor Code section 1198 and IWC Wage Order 5-2001, Section 13(B).

3 176. California Code of Regulations, Title 8, section 11050(14)(B) provides that
4 “[w]hen employees are not engaged in the active duties of their employment and the nature of
5 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
6 proximity to the work area and employees shall be permitted to use such seats when it does
7 not interfere with the performance of their duties.”

8 177. The IWC states that section 14(B) applies during “lulls in operation” when an
9 employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS*
10 *Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of
11 Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section
12 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working
13 there. *Id.* However, if other job duties take the employee to a different location where he or
14 she must perform tasks requiring standing, the employee would be entitled to a seat under
15 section 14(B) during “lulls in operation.” *Id.*

16 178. Defendants’ California restaurants are generally similar in their layout and
17 design and there was, and continues to be, space near their work areas to allow for the
18 presence and use of a seat or stool by Plaintiff Spencer and other aggrieved employees during
19 lulls in operation. Defendants could have provided Plaintiff Spencer and other aggrieved
20 employees with a seat or stool in its work areas, with reasonable or no modification to these
21 work areas, but instead denied, and continues to deny, employees seating and forced Plaintiff
22 Spencer and other aggrieved employees to stand throughout the day

23 179. Defendants did not provide Plaintiff Spencer and other aggrieved employees
24 with seats or stools in reasonable proximity to their work area to allow them to use seats when
25 it would not interfere with the performance of their duties for times when they were not
26 engaged in active duties that require standing. In other words, to the extent Plaintiff Spencer
27 and other aggrieved employees have engaged in duties in which the nature of the work
28 required standing, Defendants denied them the use of seats nearby when they were not

1 engaged in those duties. Even though the layout of Defendants' workplaces could
2 accommodate seats or stools with little to no modification to Defendants' workplaces,
3 Defendants have, on a company-wide basis, denied Plaintiff Spencer and other aggrieved
4 employees suitable seating altogether. Moreover, Defendants did not inform Plaintiff Spencer
5 and other aggrieved employees of their rights to a seat or stool under California law.

6 180. As a result of Defendants' company-wide policy and/or practice prohibiting
7 employees performing cashier duties, tending to customers at dressing rooms, greeting
8 customers, and/or performing exit security duties from sitting at any time, even when they are
9 not engaged in active duties requiring standing, and company-wide failure to provide seats in
10 reasonable proximity to their work areas, Plaintiff Spencer and other aggrieved employees
11 were forced to stand during shifts and denied seats. Defendants' failure to provide suitable
12 seating to Plaintiff Spencer and other aggrieved employees violated and continues to violate
13 California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

14 **FAILURE TO PAY FOR REPORTING TIME**

15 181. California Code of Regulations, Title 8, section 11050(5)(A) provides that
16 "[e]ach workday an employee is required to report for work and does report, but is not put to
17 work or is furnished less than half said employee's usual or scheduled day's work, the
18 employee shall be paid for half the usual or scheduled day's work, but in no event for less
19 than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which
20 shall not be less than the minimum wage." The "primary purpose of the reporting time
21 regulation" is "to guarantee at least partial compensation for employees who report to work
22 expecting to work a specified number of hours, and who are deprived of that amount because
23 of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch*
24 *Cellular*, 209 Cal. App. 4th 556 (2012).

25 182. Defendants violated California Labor Code section 1198 and California Code
26 of Regulations, Title 8, section 11050(5), because Defendants had a company-wide practice of
27 sending Plaintiff Spencer and other aggrieved employees home early from their shifts,
28 including before they had worked at least half of their regular shift, but failed to pay Plaintiff

1 Spencer and other aggrieved employees for half of their scheduled shift. Although Plaintiff
2 Spencer and other aggrieved employees would report to work based on the schedule that
3 Defendants provided to them, Defendants would send them home before they had worked at
4 least half of their scheduled shifts without giving them reporting time pay. For example, on
5 two (2) separate occasions, Plaintiff Spencer reported to work for a scheduled shift and was
6 immediately sent home, but was not compensated with reporting time pay. Accordingly,
7 Plaintiff Spencer and other aggrieved employees were not properly compensated with
8 reporting time pay in violation of California Labor Code section 1198.

9 **FAILURE TO PAY SPLIT-SHIFT PREMIUMS**

10 183. California Code of Regulations, Title 8, section 11050(4)(C) provides that,
11 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
12 in addition to the minimum wage for that workday, except when the employee resides at the
13 place of employment.” Plaintiff Spencer and other aggrieved employees did not reside at
14 Defendants’ retail locations. California Code of Regulations, Title 8, defines a split shift as “a
15 work schedule, which is interrupted by non-paid non-working periods established by the
16 employer, other than bona fide rest or meal periods.”

17 184. Defendants violated California Labor Code section 1198 and California Code
18 of Regulations, Title 8, section 11050(4)(C), because Defendants failed to pay Plaintiff
19 Spencer and other aggrieved employees a split-shift premium when they returned to work for
20 an additional shift in the same day, after having been clocked out for more than an hour. For
21 example, during the week of April 8, 2020, Defendants required Plaintiff Spencer to return to
22 work for a second shift over one (1) hour after his first shift on the same day ended, yet
23 Defendants never provided Plaintiff Spencer with a split shift premium. Accordingly,
24 Defendants required Plaintiff Spencer and other aggrieved employees to work split shifts but
25 failed to pay them an additional hour at minimum wage in violation of California Labor Code
26 section 1198

27 185. Accordingly, Defendants required Plaintiff Spencer and other aggrieved
28 employees to work split shifts but failed to pay them the split-shift premium wage in violation

of California Labor Code section 1198.

186. Defendants failure to provide Plaintiff Spencer and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11050(4)(C).

187. As a result of the foregoing violations, Plaintiff Spencer and other aggrieved employees are therefore entitled to recover civil penalties pursuant to sections 203, 210, 226.3, 225.5, 558, 1174.5, 1194, 1197.1, 2699(a) and/or 2699(f) and (g).

NINTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Brought By Plaintiff Gomes Against all Defendants)

188. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

189. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

190. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff Gomes, class members, and to the general public. Plaintiff Gomes has suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices. Plaintiff Gomes seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

191. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

192. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and practices have violated state law in at least the following respects:

- 1 (a) Requiring non-exempt, hourly-paid employees, including Plaintiff
2 Gomes and class members, to work overtime without paying them proper
3 compensation in violation of California Labor Code sections 510 and
4 1198 and the applicable IWC Order, as alleged herein;
- 5 (b) Failing to pay at least minimum wage to Plaintiff Gomes and class
6 members in violation of California Labor Code sections 1182.12, 1194,
7 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 8 (c) Failing to provide uninterrupted meal periods to Plaintiff Gomes and
9 class members in violation of California Labor Code sections 226.7,
10 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- 11 (d) Failing to authorize and permit Plaintiff Gomes and class members to take
12 uninterrupted rest periods in violation of California Labor Code sections
13 226.7, 516, and 1198, and the applicable IWC Order, as alleged herein;
- 14 (e) Failing timely to pay all earned wages to Plaintiff Gomes and class
15 members in violation of California Labor Code section 204 and the
16 applicable IWC Order, as alleged herein;
- 17 (f) Collecting and/or withholding gratuities given to employees in violation
18 of Labor Code section 351, as set forth below;
- 19 (g) Compelling and/or coercing Plaintiff Gomes and class members to
20 patronize Defendants' business in violation of California Labor Code
21 section 450, as set forth below; and
- 22 (h) Failing to reimburse Plaintiff Gomes and class members for all business
23 expenses necessarily incurred in violation of California Labor Code
24 sections 2802, as alleged herein.

25 193. At all times relevant herein, Labor Code section 204 provides that all wages
26 earned by any person in any employment between the first (1st) and the fifteenth (15th) days,
27 inclusive, of any calendar month, other than those wages due upon termination of an
28 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of

1 the month during which the labor was performed.

2 194. At all times relevant herein, Labor Code section 204 provides that all wages
3 earned by any person in any employment between the sixteenth (16th) and the last day,
4 inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
6 month.

7 195. At all times relevant herein, Labor Code section 204 provides that all wages
8 earned for labor in excess of the normal work period shall be paid no later than the payday for
9 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
10 204 provides that the requirements of this section are deemed satisfied by the payment of
11 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
12 seven (7) calendar days following the close of the payroll period.

13 196. At all relevant times herein, Defendants willfully failed to pay Plaintiff Gomes
14 and class members all wages due including, but not limited to, overtime wages, minimum
15 wages, and meal and rest period premium wages, within the time periods specified by
16 California Labor Code section 204.

17 197. At all times relevant herein, Labor Code section 351 provides that an employer
18 may not collect, take or receive any part of a gratuity paid to or left for an employee by a
19 patron, and that every gratuity is the sole property of the employee or employees to whom it
20 was paid, given, or left for. California law permits employer-mandated tip pooling so long as
21 the tip pooling policy is reasonable.

22 198. During the relevant time period, Defendants implemented a company-wide
23 employer-mandated tip pooling policy, whereby Defendants' management would collect 50%
24 of Plaintiff Gomes and Subclass members' tips to pay out kitchen staff. However, prior to
25 March 2018, Defendants' involuntary tip pooling policy was unreasonable because it forced
26 Plaintiff Gomes and Subclass members to share tips with back of house employees.
27 Defendants' employer-mandated tip pooling policy was therefore unreasonable and in
28 violation of California Labor Code section 351.

1 199. At all relevant times herein, California Labor Code section 450 provides that an
2 employer may not “compel or coerce any employee, or applicant for employment, to patronize
3 his or her employer, or any other person, in the purchase of anything of value.” An employer
4 violates section 450 by forcing an employee to patronize the employer’s business in the
5 purchase of a company-provided good.

6 200. During the relevant time period, Defendants had a company-wide policy of
7 requiring all employees to purchase uniform shirts and aprons directly from the company.
8 Plaintiff Gomes and class members were required to wear clean, unstained uniforms
9 purchased from Defendants while at work, and the uniforms would stain frequently in the
10 performance of duties. During her employment, Plaintiff Gomes was required to pay \$10 for
11 each uniform shirt and \$2 for each apron, and estimates that she spent approximately \$160 on
12 these uniform items.

13 201. Defendants’ conduct of compelling and/or coercing Plaintiff Gomes and class
14 members to purchase goods from them violates California Labor Code section 450.

15 202. As a result of the violations of California law herein described, Defendants
16 unlawfully gained an unfair advantage over other businesses. Plaintiff Gomes and class
17 members have suffered pecuniary loss by Defendants’ unlawful business acts and practices
18 alleged herein.

19 203. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
20 Plaintiff Gomes and class members are entitled to restitution of the wages withheld and
21 retained by Defendants during a period that commences four years prior to the filing of this
22 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
23 Plaintiff Gomes and class members; and an award of attorneys’ fees pursuant to California
24 Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

25 **TENTH CAUSE OF ACTION**

26 **Violation of California Business & Professions Code §§ 17200, et seq. –**

27 **Unfair Business Practices**

(Brought By Plaintiff Gomes Against all Defendants)

204. Plaintiff Gomes incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

205. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

206. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff Gomes has suffered injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff Gomes seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

207. Defendants’ activities, namely Defendants’ company-wide practice and/or policy of not paying Plaintiff Gomes and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff Gomes and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff Gomes and class members as part of their employment with Defendants, and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

208. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants’ policies and practices have violated the spirit of California’s meal and rest break laws and constitute acts against the public policy behind these laws.

209. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiff Gomes and class members are entitled to restitution for the class-wide loss of the

1 statutory benefits implemented by section 226.7 withheld and retained by Defendants during a
2 period that commences four years prior to the filing of this complaint; a permanent injunction
3 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
4 Plaintiff Gomes and class members; an award of attorneys' fees pursuant to California Code
5 of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

6 **REQUEST FOR JURY TRIAL**

7 Plaintiffs request a trial by jury.

8 **PRAYER FOR RELIEF**

9 Plaintiff Gomes, on behalf of all others similarly situated, prays for relief and
10 judgment against Defendants, jointly and severally, for damages, unpaid wages, penalties,
11 injunctive relief, and attorneys' fees in excess of twenty-five thousand dollars (\$25,000),
12 exclusive of interest and costs. Plaintiff Gomes reserves the right to amend her prayer for
13 relief to seek a different amount.

14 Plaintiff Spencer, on behalf of all other aggrieved employees, prays for relief and judgment
15 against Defendants, jointly and severally, for civil penalties and attorneys' fees in excess of
16 twenty-five thousand dollars (\$25,000).

17 **Class Certification**

- 18 1. That this case be certified as a class action;
19 2. That Plaintiff Gomes be appointed as the representative of the Class;
20 3. That counsel for Plaintiff Gomes be appointed as class counsel.

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

22 4. That the Court declare, adjudge, and decree that Defendants violated California
23 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
24 pay all overtime wages due to Plaintiff Gomes and class members;

25 5. For general unpaid wages at overtime wage rates and such general and special
26 damages as may be appropriate;

27 6. For pre-judgment interest on any unpaid overtime compensation commencing
28 from the date such amounts were due, or as otherwise provided by law;

1 7. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
2 California Labor Code section 1194(a); and

3 8. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Second Cause of Action**

6 9. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
8 minimum wages to Plaintiff Gomes and class members;

9 10. For general unpaid wages and such general and special damages as may be
10 appropriate;

11 11. For pre-judgment interest on any unpaid compensation from the date such
12 amounts were due, or as otherwise provided by law;

13 12. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
14 California Labor Code section 1194(a);

15 13. For liquidated damages pursuant to California Labor Code section 1194.2; and

16 14. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Third Cause of Action**

19 15. That the Court declare, adjudge, and decree that Defendants violated California
20 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
21 willfully failing to provide all meal periods to Plaintiff Gomes and class members;

22 16. That the Court make an award to the Plaintiff Gomes and class members of one
23 (1) hour of pay at each employee's regular rate of pay for each workday that a meal period
24 was not provided;

25 17. For all actual, consequential, and incidental losses and damages, according to
26 proof;

27 18. For premiums pursuant to California Labor Code section 226.7(b);

28 19. For pre-judgment interest on any unpaid meal period premiums from the date

1 such amounts were due, or as otherwise provided by law;

2 20. For attorneys' fees pursuant to California Code of Civil Procedure section
3 1021.5, or as otherwise provided by law; and

4 21. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Fourth Cause of Action**

7 22. That the Court declare, adjudge and decree that Defendants violated California
8 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
9 failing to authorize and permit Plaintiff Gomes and class members to take all rest periods;

10 23. That the Court make an award to the Plaintiff Gomes and class members of one
11 (l) hour of pay at each employee's regular rate of pay for each workday that a rest period was
12 not provided;

13 24. For all actual, consequential, and incidental losses and damages, according to
14 proof;

15 25. For premiums pursuant to California Labor Code section 226.7(b);

16 26. For pre-judgment interest on any unpaid rest period premiums from the date
17 such amounts were due, or as otherwise provided by law;

18 27. For attorneys' fees pursuant to California Code of Civil Procedure section
19 1021.5, or as otherwise provided by law; and

20 28. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 **As to the Fifth Cause of Action**

23 29. That the Court declare, adjudge and decree that Defendants violated California
24 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
25 and meal and rest period premiums owed at the time of termination of the employment of
26 Plaintiff Gomes and other terminated class members;

27 30. For all actual, consequential and incidental losses and damages, according to
28 proof;

1 31. For waiting time penalties according to proof pursuant to California Labor
2 Code section 203 for all employees who have left Defendants' employ;

3 32. For pre-judgment interest on any unpaid wages from the date such amounts
4 were due, or as otherwise provided by law;

5 33. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 34. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Sixth Cause of Action**

10 35. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code section 204 by willfully failing to timely pay Plaintiff Gomes and class members
12 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
13 during their employment;

14 36. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 37. For statutory penalties according to proof pursuant to California Labor Code
17 section 210;

18 38. For pre-judgment interest on any unpaid wages from the date such amounts
19 were due, or as otherwise provided by law;

20 39. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 40. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Seventh Cause of Action**

25 41. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
27 related expenses and costs incurred by Plaintiff Gomes and class members;

28 42. For unpaid business-related expenses and such general and special damages as

1 may be appropriate;

2 43. For pre-judgment interest on any unpaid business-related expenses from the
3 date such amounts were due, or as otherwise provided by law;

4 44. For all actual, consequential and incidental losses and damages, according to
5 proof;

6 45. For attorneys' fees and costs pursuant to California Labor Code
7 section 2802(c), or as otherwise provided by law; and

8 46. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Eighth Cause of Action**

11 47. That the Court declare, adjudge and decree that Defendants violated the
12 following California Labor Code provisions as to Plaintiff Spencer and/or other aggrieved
13 employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
14 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
15 and 1198 (by failing to provide all meal periods); 226.7, 516. and 1198 (by failing to authorize
16 and permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage
17 statements and maintain accurate payroll records); 204 (by failing timely to pay all earned
18 wages during employment); 201, 202, 203 (by failing timely to pay all earned wages upon
19 termination); 212 (by failing to issuing an instrument or acknowledgement of indebtedness in
20 payment of wages due with sufficient funds at time of issuance); 450 (by compelling and/or
21 coercing Plaintiff Spencer and other aggrieved employees to patronize Defendants' business);
22 1198 (by failing to provide change rooms); 1198 (by failing to provide suitable resting
23 facilities); 1198 (by failing to provide suitable seating); 1198 (by failing to pay reporting time
24 pay); 1198 (by failing to pay split-shift premiums); and 2802 (by failing to reimburse business
25 expenses);

26 48. For civil penalties pursuant to California Labor Code sections 203, 210, 226.3,
27 225.5, 558, 1174.5, 1194, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California
28 Labor Code sections 201, 202, 203, 204, 212, 226(a), 226.7, 510, 512(a), 516, 1174(d),

1 1182.12, 1194, 1197, 1198, and 2802;

2 49. For unpaid wages pursuant to California Labor Code section 558 for violations
3 of California Labor Code sections 510 and 512(a);

4 50. For injunctive relief pursuant to California Labor Code section 1194.5 and/or
5 2699(a), (f)-(g) to bring Defendants into compliance with California's seating requirements;

6 51. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 203, 204, 212, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d),
9 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

10 52. For pre-judgment and post-judgment interest as provided by law; and

11 53. For such other and further relief as the Court may deem equitable and
12 appropriate

13 **As to the Ninth Cause of Action**

14 54. That the Court declare, adjudge and decree that Defendants conduct of failing
15 to provide Plaintiff Gomes and class members all overtime wages due to them, failing to
16 provide Plaintiff Gomes and class members all minimum wages due to them, failing to
17 provide Plaintiff Gomes and class members all meal periods, failing to authorize and permit
18 Plaintiff Gomes and class members to take all rest periods, failing timely to pay Plaintiff
19 Gomes and class members all earned wages during employment, implementing an
20 unreasonable tip-pooling policy for Plaintiff Gomes and Subclass members, compelling and/or
21 coercing Plaintiff Gomes and class members to patronize Defendants' business, and failing to
22 reimburse Plaintiff Gomes and class members for business-related expenses, constitutes an
23 unlawful business practice in violation of California Business and Professions Code sections
24 17200, *et seq.*;

25 55. For restitution of unpaid wages to Plaintiff Gomes and all class members and
26 prejudgment interest from the day such amounts were due and payable;

27 56. For the appointment of a receiver to receive, manage and distribute any and all
28 funds disgorged from Defendants and determined to have been wrongfully acquired by

Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5; and

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff Gomes and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff Gomes and class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200 *et seq.*;

62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

63. For pre-judgment and post-judgment interest as provided by law; and

64. For such other and further relief as the Court may deem equitable and appropriate.

Dated: July 9, 2020

Respectfully submitted,
Capstone Law APC

By: 

Mark A. Ozzello
Brandon Brouillette
Brooke W. Waldrop
Attorneys for Plaintiffs Brandy Gomes and
Jamar Spencer

EXHIBIT 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

BROOKE WALDROP
310.712.8033 Direct
Brooke.Waldrop@capstonelawyers.com

February 24, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/260>)

Subject: *Jamar Spencer v. Kura Sushi USA, Inc.*

Dear PAGA Administrator:

This office represents Jamar Spencer in connection with his claims under the California Labor Code. Mr. Spencer was an employee of KURA SUSHI USA, INC. (referred to as "KURA SUSHI").

The employer may be contacted directly at the address below:

KURA SUSHI USA, INC.
17932 SKY PARK CIRCLE, SUITE H
IRVINE, CA 92614

Mr. Spencer intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Spencer seeks relief on behalf of himself, the State of California, and other persons who are or were employed by KURA SUSHI as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

KURA SUSHI employed Mr. Spencer as an hourly paid, non-exempt employee from approximately March 20, 2019 to April 19, 2019. Mr. Spencer worked for KURA SUSHI as a Server at their Sacramento, California restaurant located at 1600 Ethan Way, Suite #10, Sacramento, California 95825. During his employment, Mr. Spencer typically worked six (6) to eight (8) hours per day, four (4) to five (5) days per week, and approximately twenty-four (24) to forty (40) hours per week. At the time Mr. Spencer's employment with KURA SUSHI ended, he earned approximately \$12 per hour. His job duties included, without limitation, explaining Kura Sushi's conveyor belt system to customers, fulfilling and serving drink orders, bussing tables, and filling condiment bottles.

KURA SUSHI committed one or more of the following Labor Code violations against Mr. Spencer, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

KURA SUSHI’s Company-Wide and Uniform Payroll and HR Practices

KURA SUSHI USA, INC. is a Delaware corporation. On information and belief, KURA SUSHI is headquartered at 17932 Sky Park Circle, Suite H, Irvine, California 92614. KURA SUSHI operates and manages a chain of Japanese-themed restaurants sushi served via conveyor belts. KURA SUSHI owns or franchises over 365 restaurant locations worldwide. There are approximately nine (9) KURA SUSHI locations in California, all of which are company owned. Upon information and belief, KURA SUSHI maintains a single, centralized Human Resources (HR) department at their corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for KURA SUSHI in California, including Mr. Spencer and other aggrieved employees. At all relevant times, KURA SUSHI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Spencer and other aggrieved employees, regardless of their location or position.

Upon information and belief, KURA SUSHI maintains a centralized Payroll department at their corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for KURA SUSHI in California, including Mr. Spencer and other aggrieved employees. Further, KURA SUSHI issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Spencer and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, KURA SUSHI utilized the same methods and formulas when calculating wages due to Mr. Spencer and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

KURA SUSHI willfully failed to pay all overtime wages owed to Mr. Spencer and other aggrieved employees. During the relevant time period, Mr. Spencer and other aggrieved employees were not

¹ These facts, theories, and claims are based on Mr. Spencer’s experience and counsel’s review of those records currently available relating to Mr. Spencer’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Spencer reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, KURA SUSHI had, and continues to have, a company-wide policy of staffing their restaurants strictly based on labor hours allotted by a labor budget, which has resulted in and continues to result in chronic understaffing. KURA SUSHI'S company-wide understaffing of their restaurants led to a failure to provide employees with adequate meal period coverage. As a result, Mr. Spencer and other aggrieved employees were not always provided with uninterrupted 30-minute meal periods during shifts to which they were entitled to receive a meal period. For example, twice a week, Mr. Spencer's meal periods were interrupted for ten (10) to fifteen (15) minutes due to requests by managers and supervisors to assist with an influx of customers.

Second, during the relevant time period, KURA SUSHI had, and continue to have, a strict policy prohibiting employees from accruing overtime, causing Mr. Spencer and other aggrieved employees to perform duties off-the-clock without reporting their hours worked. As a result, Mr. Spencer and other aggrieved employees were routinely required to perform tasks before and after their scheduled shifts, on their off-days, and during unpaid meal periods. For example, three (3) times a week, Mr. Spencer spent thirty (30) minutes to one (1) hour working off-the-clock setting up tables and filling condiment bottles before clocking in for his scheduled shift. Additionally, one (1) to three (3) times a week, Mr. Spencer spent thirty (30) minutes to one (1) hour working off-the-clock after clocking out from his scheduled shift completing assigned tasks, such as bussing tables and making drink orders. Furthermore, five (5) times a week, Mr. Spencer spent approximately five (5) to ten (10) minutes working off-the-clock taking out the garbage after clocking out from his scheduled shift.

Third, KURA SUSHI had a company-wide practice of requiring Mr. Spencer and other aggrieved employees to respond to work-related messages at all times using their personal cellular phones, including when they were off-the-clock. KURA SUSHI insisted that Mr. Spencer and other aggrieved employees promptly respond to work-related communications, even outside of scheduled shifts. For example, at least once a week, Mr. Spencer had to respond to messages sent through GroupMe, the group text messaging app KURA SUSHI required Mr. Spencer and other aggrieved employees to download to their personal phones. These messages were sent while Mr. Spencer was off-the-clock, either after a scheduled shift or during an unpaid meal break. Mr. Spencer would spend approximately a total of one (1) to two (2) minutes reading and responding to these messages every shift.

Fourth, KURA SUSHI had a company-wide policy and/or practice of requiring other aggrieved employees to conduct or attend mandatory trainings at remote locations, but did not compensate them for their time spent traveling to and from these locations. For example, KURA SUSHI would schedule other aggrieved employees for mandatory job training meetings at remote locations, yet KURA SUSHI did not compensate them for their time spent traveling to and from these locations.

KURA SUSHI knew or should have known that as a result of these company-wide practices and/or policies, Mr. Spencer and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Spencer and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for

overtime premium pay. Therefore, Mr. Spencer and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, KURA SUSHI did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, KURA SUSHI paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, KURA SUSHI failed to incorporate all remunerations, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, KURA SUSHI failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Spencer and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 5 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked").

As set forth above, due to KURA SUSHI'S use of labor budgets and resultant understaffing, along with its practice of requiring employees to avoid accruing overtime, Mr. Spencer and other aggrieved employees had their meal periods interrupted or were otherwise not relieved of all duties during meal periods. As a further result of these policies and/or practices, Mr. Spencer and other aggrieved employees were forced to work off-the-clock. Additionally, as stated, KURA SUSHI had a company-wide policy and/or practice of requiring Mr. Spencer and other aggrieved employees to communicate with management and co-workers while off-the-clock using their cellular phones regarding work-related matters. Lastly, KURA SUSHI had a company-wide policy and/or practice of requiring other aggrieved employees to conduct or attend mandatory trainings at remote locations on their off-days, but did not compensate them for their time spent traveling to and from these locations.

Thus, KURA SUSHI did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, KURA SUSHI did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, KURA SUSHI regularly failed to pay at least minimum wages to Mr. Spencer and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

As set forth above, during the relevant time period, KURA SUSHI had, and continues to have, a company-wide practice of requiring employees to avoid accruing overtime hours. This requirement to avoid reporting all hours worked, coupled with KURA SUSHI's company-wide policy and/or practice of labor budgeting, understaffing, and failure to provide adequate meal period coverage, prevented Mr. Spencer and other aggrieved employees from taking compliant meal periods and caused Mr. Spencer and other aggrieved employees to work off-the-clock without that time being recorded. As a result, Mr. Spencer and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, twice a week, Mr. Spencer's meal periods were interrupted for ten (10) to fifteen (15) minutes due to requests by managers and supervisors to assist with an influx of customers. As a further example, Mr. Spencer was sometimes made to work over five (5) hours straight before KURA SUSHI permitted him to take his meal period.

Moreover, KURA SUSHI has a policy and/or practice of requiring that Mr. Spencer and other aggrieved employees carry their personal cellular phones at all times in order to respond to messages from supervisors and management on the GroupMe app, even during unpaid meal periods. KURA SUSHI'S supervisors and management contacted Mr. Spencer and other aggrieved employees through the GroupMe app during their meal periods regarding work-related matters, including to instruct employees to return to work. Consequently, Mr. Spencer and other aggrieved employees suffered untimely or interrupted meal periods, work for which they were not paid. Thus, as a result of KURA SUSHI'S company-wide policies and/or practices, and requirement that Mr. Spencer and other aggrieved employees carry their personal cellular phones at all times and respond to messages from management on the GroupMe app at all times, Mr. Spencer and other aggrieved employees were rarely provided timely, uninterrupted 30-minute meal periods during shifts in which they were entitled to receive meal periods.

KURA SUSHI knew or should have known that as a result of its policies, that Mr. Spencer and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Despite this, KURA SUSHI did not pay Mr. Spencer and other aggrieved employees meal period premium wages when they were missed, late, short, and/or interrupted. As a result, Mr. Spencer and other aggrieved employees worked through some or all of their meal periods, had their meal periods interrupted and/or cut short to return to work, and/or waited extended periods of time before taking meal periods.

Furthermore, KURA SUSHI engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Alternatively, to the extent that KURA SUSHI did pay other aggrieved employees meal period premium wages, KURA SUSHI to other aggrieved employees, it did so at the incorrect rates. Because KURA SUSHI did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, KURA SUSHI any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, KURA SUSHI failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Spencer and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Provide Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

First, as with meal periods, KURA SUSHI'S requiring that employees carry their personal cellular phones at all times in order to respond to messages on the GroupMe app prevented Mr. Spencer and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. As a result, Mr. Spencer and other aggrieved employees would frequently work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, Mr. Spencer's rest periods were interrupted three (3) times per week by messages from his managers and supervisors requesting him to bus tables.

Second, as with meal periods, KURA SUSHI'S policy and/or practice of utilizing labor budgets, and the resultant understaffing, led to a failure to provide Mr. Spencer and other aggrieved employees with adequate meal period coverage. As a result, Mr. Spencer and other aggrieved employees would frequently work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours, without receiving all uninterrupted ten (10) minute rest periods to which they were entitled. For example, once a week, Mr. Spencer would work over four (4) hours without being authorized and permitted to take his first 10-minute rest period. As a further example, Mr. Spencer missed three (3) rest breaks entirely during his employment.

Additionally, upon information and belief, KURA SUSHI maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Spencer and other aggrieved employees remain on KURA SUSHI'S premises during their rest periods. Upon information and belief, KURA SUSHI'S company-wide on-premises rest period policy prevented Mr. Spencer and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

KURA SUSHI also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Spencer and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that KURA SUSHI did pay rest period premium wages to Mr. Spencer and/or other aggrieved employees, KURA SUSHI did not pay Mr. Spencer and/or other aggrieved employees at the correct rate of pay for premium wages because KURA SUSHI systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, to the extent KURA SUSHI paid Mr. Spencer and/or other aggrieved employees premium pay for missed rest periods, it did so at a lower rate than required by law.

Accordingly, KURA SUSHI failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Spencer and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. KURA SUSHI has not provided Mr. Spencer and other aggrieved employees with properly itemized wage statements. Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, KURA SUSHI has knowingly and intentionally provided Mr. Spencer and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, KURA SUSHI issued uniform wage statements to Mr. Spencer and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, KURA SUSHI violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because KURA SUSHI did not record the time Mr. Spencer and other aggrieved employees spent working off-the-clock, KURA SUSHI did not list the correct amount of gross wages and net wages earned by Mr. Spencer and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, KURA SUSHI failed to accurately list the total number of hours worked by Mr. Spencer and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because KURA SUSHI did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, KURA SUSHI did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1). For the same reason, KURA SUSHI failed to list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). KURA SUSHI also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, 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..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), KURA SUSHI willfully failed to maintain accurate payroll records for Mr. Spencer and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, KURA SUSHI failed, on a company-wide basis, to keep accurate records of meal period start and stop times for Mr. Spencer and other aggrieved employees in violation of section 1198.

Because KURA SUSHI failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Spencer and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Spencer and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Spencer and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period. During the relevant time period, KURA SUSHI failed to pay Mr. Spencer and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, split shift wages, and reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Spencer and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, KURA SUSHI has a company-wide practice and/or policy of paying departing employees their final wages later than the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Spencer gave immediate notice of his resignation on April 19, 2019. However, KURA SUSHI did not provide Mr. Spencer with his final paycheck until April 25, 2019, six (6) days later. Thus, KURA SUSHI failed to pay Mr. Spencer his final wages within the requisite time limit in violation of Labor Code section 202.

In addition, KURA SUSHI willfully failed to pay Mr. Spencer and other aggrieved employees who are no longer employed by KURA SUSHI all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving KURA SUSHI's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Spencer and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 212– Insufficient Funds at Time of Issuance of Check

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. Further, section 212 requires the instrument have, “at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.”

On information and belief, KURA SUSHI has a company-wide practice of issuing instruments to employees without sufficient funds in at the time of issuance. For example, KURA SUSHI provided Mr. Spencer with his final paycheck on April 25, 2019. When Mr. Spencer attempted to deposit this check in his banking account at his credit union, the check did not clear. As a result, Mr. Spencer’s credit union charged him overdraft fees when charges were paid from his account without the funds from his KURA SUSHI check he had relied upon. Days later, Mr. Spencer received a “Return to Maker” letter from his credit union, with the check enclosed.

As a result of KURA SUSHI’s company-wide policy and/or practice of issuing instruments to employees without sufficient funds in at the time of issuance, Mr. Spencer and/or other aggrieved employees suffered overdraft fees when charges were paid from their accounts without the funds from their KURA SUSHI checks they had relied upon. KURA SUSHI’s failure to issue instruments with sufficient funds in to Mr. Spencer and/or other aggrieved employees violates California Labor Code section 212.

Mr. Spencer and/or other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Coerced Patronage of Employer’s Business

At all relevant times herein, California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer’s business in the purchase of a company-provided good.

KURA SUSHI had, and continues to have, a company-wide policy of requiring employees to purchase food directly from the company in order to sit within the dining area of the restaurant during meal periods. As such, the only times Mr. Spencer and other aggrieved employees purchased were allowed to sit within the dining area of the restaurant was when they purchased food directly from the company. Furthermore, as alleged below, KURA SUSHI does not provide suitable resting areas for employees, thus, employees are coerced to purchase food from KURA SUSHI in order to rest during work hours at their restaurant. For example, once, Mr. Spencer was allowed to sit and rest in KURA SUSHI’S dining area after he purchased a fried squid entrée during a meal period. KURA SUSHI’S conduct of compelling and/or coercing Mr. Spencer and other aggrieved employees to purchase goods from them violates California Labor Code section 450.

Mr. Spencer and other aggrieved employees are therefore entitled to recover penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(A) – Failure to Provide Change Rooms

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(A) provides that “[w]hen the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.”

KURA SUSHI’s California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a changing room or equivalent space that employees may change their clothing in reasonable privacy and comfort. KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with a change room or equivalent space in its restaurant, with reasonable or no modification, but instead denied, and continues to deny, employees these changing room and forced Mr. Spencer and other aggrieved employees to change into uniforms in the restrooms of the restaurant.

KURA SUSHI did not provide Mr. Spencer and other aggrieved employees with change rooms or any equivalent to allow them to change into uniforms in reasonable privacy and comfort. Furthermore, due to KURA SUSHI’S attendance policy, Mr. Spencer and other aggrieved employees were expected to be in uniform and prepared to begin work at the start of their scheduled shifts. In other words, to the extent Mr. Spencer and other aggrieved employees were required to wear uniforms and were unable to change into the uniform prior to reporting to work, KURA SUSHI denied them access to a reasonably private and comfortable changing area outside of the restaurant’s restrooms. For example, once, when Mr. Spencer arrived to work at the beginning of his scheduled shift in his street clothing, he was forced to use KURA SUSHI’S restroom in order to change into his uniform. Moreover, KURA SUSHI did not inform Mr. Spencer and other aggrieved employees of their rights to a changing room or area under California law.

As a result of KURA SUSHI’s company-wide policy and/or practice of failing to provide adequate change room facilities to employees at any time, Mr. Spencer and other aggrieved employees were forced to change into their required uniforms in KURA SUSHI’S restroom. KURA SUSHI’s failure to provide change rooms to Mr. Spencer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 13(A).

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring KURA SUSHI into compliance with California’s change room requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of

labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

KURA SUSHI’s California restaurants are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during rest or meal periods. KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with a resting facility within its restaurants, with reasonable or no modification, but instead denied, and continues to deny, employees areas to rest. As a result, Mr. Spencer and other aggrieved employees were forced to adjust to unrestful areas, such as standing in active work areas during rest periods, or search for facilities outside of the restaurant which are not designated or reserved for their rest, such as utilizing the tables and chairs of nearby business during meal periods.

KURA SUSHI did not provide Mr. Spencer and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Mr. Spencer and other aggrieved employees are legally allowed to forgo assigned tasks, as in during a rest or meal period, KURA SUSHI denied them any area within their restaurants to cease work and recover. For example, Mr. Spencer was not allowed to sit in the dining area during working hours and while in uniform, unless he purchased and ate a meal prepare by KURA SUSHI during a meal period. Moreover, KURA SUSHI did not inform Mr. Spencer and other aggrieved employees of their rights to resting facilities under California law.

As a result of KURA SUSHI’s company-wide policy and/or practice of denying employees any area to rest within their restaurants, unless the employee patronized the business, and company-wide failure to provide resting facilities in their restaurants, Mr. Spencer and other aggrieved employees were forced to adjust to unrestful areas or search for facilities outside their restaurants to cease work and recover. KURA SUSHI’s failure to provide suitable resting facilities to Mr. Spencer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 13(B).

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring KURA SUSHI into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11050(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

KURA SUSHI’s California restaurants are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Spencer and other aggrieved employees during lulls in operation. KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denied, and continues to deny, employees seating and forced Mr. Spencer and other aggrieved employees to stand throughout the day.

KURA SUSHI did not provide Mr. Spencer and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Spencer and other aggrieved employees engaged in duties in which the nature of the work required standing, KURA SUSHI denied them the use of seats nearby during lulls in their work duties. Moreover, KURA SUSHI did not inform Mr. Spencer and other aggrieved employees of their rights to a seat or stool under California law.

As a result of KURA SUSHI’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Spencer and other aggrieved employees were forced to stand during shifts and denied seats. KURA SUSHI’s failure to provide suitable seating to Mr. Spencer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 5-2001, Section 14(B).

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring KURA SUSHI into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11050(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4)

hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer." *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

KURA SUSHI violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(5), because KURA SUSHI had a company-wide practice of sending Mr. Spencer and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but failed to pay Mr. Spencer and other aggrieved employees for half of their scheduled shift. Although Mr. Spencer and other aggrieved employees would report to work based on the schedule that KURA SUSHI provided to them, KURA SUSHI would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, on two (2) separate occasions, Mr. Spencer reported to work for a scheduled shift and was immediately sent home, but was not compensated with reporting time pay. Accordingly, Mr. Spencer and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful."

California Code of Regulations, Title 8, section 11050(4)(C) provides that "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

KURA SUSHI willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11050(4)(C), because KURA SUSHI failed to pay Mr. Spencer and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. For example, during the week of April 8, 2020, KURA SUSHI required Mr. Spencer to return to work for a second shift over one (1) hour after his first shift on the same day ended, yet KURA SUSHI never provided Mr. Spencer with a split shift premium. Accordingly, KURA SUSHI required Mr. Spencer and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

KURA SUSHI's failure to provide Mr. Spencer and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations

Title 8, Section 11050(4)(C). Mr. Spencer and other aggrieved employees are therefore entitled to recover civil penalties pursuant to sections 1194 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 5-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, KURA SUSHI had a company-wide written policy of requiring Mr. Spencer and other aggrieved employees to report to work in clean uniforms under threat of discipline, which forced Mr. Spencer and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. For example, Mr. Spencer was given two (2) white, button-down uniform shirts, two (2) aprons, and two (2) pairs of black slacks at the start of his employment with KURA SUSHI. Since he was often scheduled to work four (4) to five (5) days in a week, Mr. Spencer was required to wash his uniform shirts, aprons, and slacks three (3) times a week—much more frequently than he would otherwise do his laundry. Furthermore, each time Mr. Spencer reported to work with a dirty apron, he was given a written warning.

Second, during the relevant time period, KURA SUSHI, on a company-wide basis, required that Mr. Spencer and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but failed to reimburse them for the costs of their cellular phone and/or data plans. For example, Mr. Spencer was required to download the GroupMe group texting app on his personal cellular phone in order to answer texts from management to discuss any problems or ongoing issues at the restaurant, including any requests to assist with an influx of customers. Although KURA SUSHI required Mr. Spencer and other aggrieved employees to regularly utilize his personal cellular phone to carry out work-related responsibilities, KURA SUSHI failed to reimburse them for this cost.

KURA SUSHI could have provided Mr. Spencer and other aggrieved employees with the actual tools required for use on the job, including company phones, an adequate number of uniforms, and/or provided laundering services. Or, KURA SUSHI could have reimbursed Mr. Spencer and other aggrieved employees for their cost of their cellular phone usage, and laundering expenses. Instead, KURA SUSHI passed these operating costs off onto Mr. Spencer and other aggrieved employees.

Thus, KURA SUSHI had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Spencer and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” KURA SUSHI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Spencer and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Spencer seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Mr. Spencer, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against KURA SUSHI for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Spencer seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Brooke Waldrop
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1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Brooke Waldrop

Copy: KURA SUSHI USA, INC. (via U.S. Certified Mail); Marisol C. Mork, Squire Patton Boggs (US) LLP, 555 South Flower Street, 31st Floor, Los Angeles, California 90071 (via U.S. Certified Mail)

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