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and the Plaintiff Class

IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

JOSE LUIS VENANCIO ALTAMIRANO, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

COM TAM THIEN HUONG II, a California
corporation; HIEN C NGUYEN, an individual;
and DOES 1 through 50, inclusive,

Defendants.

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County of Santa Clara
20CV363254
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Case No. 20CV363254

CLASS ACTION

COMPLAINT

1. Failure to Provide Meal Periods or Pay Meal Period Premiums (Labor Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Authorize and Permit Rest Breaks or Pay Rest Break Premiums (Labor Code §§ 204, 223, and 226.7);
3. Failure to Pay Overtime Wages (Violation of California Wage Order and Labor Code §§ 204, 223, 510, 1194, 1197 and 1198);
4. Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226);
5. For Waiting Time Penalties (Labor Code §§ 201, 202, 203);
6. Recovery under PAGA (Labor Code §§ 2699-2699); and,
7. Unfair Competition (Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

DEMAND FOR JURY TRIAL

Representative Plaintiff JOSE LUIS VENANCIO ALTAMIRANO complains and alleges as follows:

PRELIMINARY STATEMENT

1. This is a class action, brought on behalf of Plaintiff JOSE LUIS VENANCIO ALTAMIRANO (“Plaintiff” or “Representative Plaintiff”) and all other persons similarly situated (collectively “Class Members”) who are or have been employed as non-exempt employees (including but not limited to those holding the job title of “cook”, “assistant cook”, “food preparer”, “cook”, “dishwasher”, “laborer”) by Defendants COM TAM THIEN HUONG II (“COM TAM THIEN HUONG II”), HIEN C NGUYEN (“NGUYEN”) and DOES 1-50, inclusive (hereinafter, collectively “Defendants”) at Defendant’s restaurants in California within the applicable Class Period (referred to herein as “Class Members” or “Workers”). Representative Plaintiff, on behalf of himself and the Class Members, seeks premium compensation for unpaid overtime and missed meal and rest periods, interest thereon, related statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and litigation costs pursuant to, *inter alia.*, Title 8 of the California Code of Regulations, California Labor Code, California Business and Professions Code sections 17200, *et seq.*, California Code of Civil Procedure Section 1021.5.

2. The “Class Period” is defined as the four years prior to the date on which this Complaint was initially filed and continuing through the present time, based upon the allegation that the violations of California’s wage and hour laws, as described more fully below, have been ongoing throughout that time.

3. During the Class Period, Representative Plaintiff alleges, on information and belief, Defendants had a consistent policy of (1) unlawfully failing to provide Representative Plaintiff and Class Members with timely, statutorily-mandated off-duty meal and rest periods and/or failing to properly compensate them for meal and rest period violations; (2) unlawfully failing to pay Representative Plaintiff and Class Members with for all hours worked, including all minimum wages and overtime premiums owed; (3) not providing Representative Plaintiff and Class Members with accurate, itemized wage statements as required by law; (4) not timely providing Representative Plaintiff and Class Members with all wages owed at separation from their

1 employment as required by law; and (5) violating California's Unfair Competition Law (the
2 "UCL").

3 INTRODUCTION

4 4. Defendant COM TAM THIEN HUONG II is a registered California Corporation
5 that owns and operates restaurants in the State of California within the County of Santa Clara.

6 5. Representative Plaintiff is informed and believes, and upon such information and
7 belief alleges that, at all times herein relevant, Defendant HIEN C NGUYEN was and is an
8 individual doing business in the County of Santa Clara. During all relevant times, NGUYEN was
9 the "employer" of Representative Plaintiff within the meaning of all applicable state laws and
10 statutes. Representative Plaintiff is also informed and believes, and based thereon alleges, that
11 NGUYEN, at all relevant times herein, acted as an owner, director and/or managing agent of COM
12 TAM THIEN HUONG II.

13 6. Representative Plaintiff alleges, based on information and belief, that during the
14 relevant Class Period Defendants employed a large number of employees in California in positions
15 that did not, and currently do not, meet any known test for exemption of payment of minimum and
16 overtime wages, the entitlement to accurate itemized wage statements and meal and rest periods.

17 7. Despite actual knowledge of these facts and legal mandates, Defendants had and
18 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
19 by electing not to pay Representative Plaintiff and Class Members all minimum and overtime
20 premium wages; not providing off-duty, timely meal and rest periods or compensation therefore;
21 not providing accurate wage statements; and not providing all wages due and owing upon
22 employees' separation from their employment in a timely manner.

23 8. Representative Plaintiff is informed and believes and, based thereon, alleges that
24 officers and managing agents of Defendants, including NGUYEN, knew of these facts and legal
25 mandates yet, nonetheless, repeatedly authorized and/or ratified the violations of the laws cited
26 herein.

27 9. Despite Defendant's knowledge of Representative Plaintiff and Class Members'
28 entitlement to minimum wages and overtime premiums, meal and rest periods or break violation

1 pay for all applicable work periods, accurate wage statements, Defendants failed to provide the
2 same to Representative Plaintiff and Class Members, in violation of the California Labor Code and
3 Business and Professions Code, the applicable California Industrial Welfare Commission Wage
4 Order and Title 8 of the California Code of Regulations. Moreover, Defendants failed to pay all
5 final wages to Representative Plaintiff and Class Members whose employment ended.

6 10. This action is brought to redress and end this long-time pattern of unlawful conduct
7 once and for all. Despite actual knowledge of these facts and legal mandates, Defendants have and
8 continue to enjoy an advantage over their competition and have imposed a resultant disadvantage
9 to their workers by electing not to pay minimum wages, premium wages (e.g., overtime, meal and
10 rest period wages) and/or pay penalties to which they are entitled (e.g. “wages statement,” and/or
11 “underpayment” penalties) to their Workers in California.

12 **JURISDICTION AND VENUE**

13 11. This Court has jurisdiction over this action because the amount in controversy
14 exceeds \$25,000.

15 12. Pursuant to California Code of Civil Procedure Section 395(a), venue is proper in
16 the County of Santa Clara because Defendants’ obligations and liability arose, at least in part,
17 therein, and because the alleged injuries sustained by Representative Plaintiff, as well as other
18 Class Members, occurred in the County of Santa Clara.

19 **PLAINTIFF**

20 13. Representative Plaintiff brings this action against Defendants, for engaging in a
21 uniform policy and systematic scheme of wage and hour abuse against their Workers in California.
22 As used through this Complaint, the term “Class Members” refers to the Representative Plaintiff
23 herein as well as each and every person eligible for membership in the Class as described and
24 defined herein.

25 14. Representative Plaintiff JOSE LUIS VENANCIO ALTAMIRANO is a natural
26 person, who was employed by Defendants as a non-exempt server at Defendant’s “Com Tam
27 Thien Huong II” restaurant located at 1759 East Capitol Expressway, San Jose, CA from
28 approximately October 2013 until on or about August 18, 2019. Defendants paid Representative

1 Plaintiff an hourly wage during the Class Period. At all times herein relevant, Representative
2 Plaintiff was and is now a person within the Class as further described and defined therein.

3 15. Representative Plaintiff routinely worked for Defendants without being provided
4 timely, off-duty, net ten minute rest periods for every four hours worked or major fraction thereof,
5 without being provided a thirty minute uninterrupted, duty-free meal period during meal period
6 eligible shifts, and without being paid one (1) hour of pay at the employee's regular rate of
7 compensation for each work day that a meal or rest period was not provided. Representative
8 Plaintiff alleges, on information and belief, these meal and rest break violations were the result of
9 policies and procedures applied uniformly to all Class Members during the Class Period.

10 16. Representative Plaintiff often worked more than 8 hours in one single day, 12 hours
11 in one single day, or more than 40 hours in a week. Defendants failed to pay Representative
12 Plaintiff and Class Members all legally required overtime premium pay to which they were
13 entitled. Representative Plaintiff alleges, on information and belief, the overtime violations were
14 the result of policies and procedures applied uniformly to all Class Members during the Class
15 Period.

16 17. Representative Plaintiff did not receive wage statements that accurately reflected all
17 wages owed and did not include all information required to be included by law. For example,
18 Plaintiff's wage statement did not reflect overtime premiums that should have been paid, premium
19 pay for untimely or missed meal or rest periods, and other compensation. Representative Plaintiff
20 alleges, on information and belief, such violations were the result of policies and procedures
21 applied uniformly to all Class Members during the Class Period.

22 18. Furthermore, after Representative Plaintiff's employment with Defendants ended on
23 or around August 18, 2019, Representative Plaintiff was not paid all his wages owed (including but
24 not limited to overtime wages and premium pay) with more than thirty days elapsing since the end
25 of his employment with Defendants.

26 19. Representative Plaintiff brings this action on behalf of himself and as a class action,
27 pursuant to California Code of Civil Procedure Section 382, on behalf of all persons similarly
28 situated and proximately damaged by the unlawful conduct described herein.

DEFENDANTS

20. Representative Plaintiff is informed and believes and, based thereon, alleges at all times herein relevant, defendant COM TAM THIEN HUONG II was and is a registered California Corporation in the business of operating restaurants in the State of California, within the County of Santa Clara.

21. Representative Plaintiff is informed and believes, and upon such information and belief alleges, at all times herein relevant, Defendant HIEN C NGUYEN is an individual doing business in the County of Santa Clara. During all relevant times, HIEN C NGUYEN was the “employer” of Representative Plaintiff within the meaning of all applicable state laws and statutes. Representative Plaintiff is also informed and believes, and based thereon alleges, HIEN C NGUYEN, at all relevant times herein, acted as an owner, director and/or managing agent of COM TAM THIEN HUONG II Representative Plaintiff is informed and believes, and upon such information and belief alleges HIEN C NGUYEN violated, and/or caused to be violated, California’s Labor Code and the applicable Wage Order as alleged more fully herein.

22. The true and correct names and capacities of DOES 1 through 50, inclusive, are unknown to Representative Plaintiff, who therefore sues said Defendants by such fictitious names. Representative Plaintiff is informed and believes and thereon alleges that each of said fictitious Defendants caused injury and damages to Representative Plaintiff.

23. Defendants DOES 1 through 10 are individuals employed by defendant COM TAM THIEN HUONG II.

24. At all times relevant herein, Defendants and DOES 11-50 inclusive were and are employer(s) and person(s) within the definition of California Labor Code Section 18, the applicable Industrial Wage Order, and California Business and Professions Code Section 17201.

25. Representative Plaintiff is informed and believes and, on that basis, alleges at all relevant times herein mentioned each of the Defendants, including DOES 1 through 50, were the agents, employees, supervisors, employers, alter egos, and/or joint ventures of the remaining defendants, and were acting both individually and in the course and scope of such relationship, and/or as an integrated enterprise, and/or as joint employers, with the knowledge and/or consent of

1 the remaining Defendants.

2 26. Representative Plaintiff is informed and believes and, on that basis, alleges that
3 COM TAM THIEN HUONG II is an alter ego of defendant NGUYEN as, at all relevant times
4 herein, there existed a unity of interest and ownership between Defendants such that any
5 individually and separateness between them has ceased.

6 27. Representative Plaintiff is informed and believes and on such information and belief
7 alleges, at all times relevant hereto, COM TAM THIEN HUONG II , was conceived, intended, and
8 used by NGUYEN as a device to avoid individual liability and commit financial fraud on the
9 corporation's creditors, including Plaintiff.

10 28. Furthermore, Representative Plaintiff is informed and believes and on such
11 information and belief alleges, at all times relevant hereto, COM TAM THIEN HUONG II was
12 inadequately capitalize, Defendants intermingled personal and corporate finances, that NGUYEN
13 used assets of COM TAM THIEN HUONG II for his own personal uses, caused assets of business
14 entity to be transferred to himself or for his personal use without adequate consideration, and
15 withdraw funds from the business entity defendants' bank accounts for own personal use.

16 29. Representative Plaintiff is informed and believes and on such information and belief
17 alleges, at all times relevant hereto, COM TAM THIEN HUONG II was a mere shell,
18 instrumentality, and conduit through which NGUYEN carried on their joint venture business in the
19 business entity names exactly as he had conducted it previous to any incorporation, exercising
20 complete control and dominance of such businesses to such an extent any individuality or
21 separateness of COM TAM THIEN HUONG II and NGUYEN does not exist, and at all times
22 herein mentioned did not exist.

23 30. Representative Plaintiff is informed and believes and on such information and belief
24 alleges, COM TAM THIEN HUONG II is and at all times herein mentioned was controlled,
25 dominated, and operated by NGUYEN as an individual business and alter ego, in that the activities
26 and business of COM TAM THIEN HUONG II was carried out without following corporate
27 formalities. Plaintiff further alleges that NGUYEN caused COM TAM THIEN HUONG II to be
28 inadequately capitalized such that the corporation was never a separate entity capable of standing

1 on its own. Plaintiff further alleges that NGUYEN entered into personal transactions with COM
2 TAM THIEN HUONG II without the approval of other directors or shareholders.

3 31. Adherence to the fiction of this separate existence of COM TAM THIEN HUONG
4 II as an entity distinct from NGUYEN would permit abuse of the corporate privilege and would
5 sanction a fraud in that NGUYEN caused funds to be withdrawn from the funds of the business
6 entity defendants, distributing such funds to themselves without any consideration to the business
7 entity defendants, all for the purpose of avoiding and preventing creditors, such as Representative
8 Plaintiff herein, from attaching and executing on the assets of the business entity defendants.

9 32. Representative Plaintiff is informed and believes and on such information and belief
10 alleges, that Defendant NGUYEN is liable under Labor Code 558.1 for the violations alleged
11 herein as he was an owner, director, officer, or managing agent of COM TAM THIEN HUONG
12 and, furthermore, violated or caused to be violated multiple provisions of the applicable IWC
13 Wage Order and Labor Code, as set forth in detail herein.

14 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

15 33. Representative Plaintiff brings this action individually and as a class action on
16 behalf of all persons similarly situated and proximately damaged by Defendants' conduct,
17 including but not limited to the following class ("Class Members" or "the "Plaintiff Class"):

18 All non-exempt employees of the Defendants who worked at Defendant's
19 COM TAM THIEN HUONG II restaurant (including but not limited to
20 those holding the job title of "cook", "assistant cook", food preparer",
21 "cook", "dishwasher", "laborer") in the State of California at any time
22 during the four years preceding the filing of this Complaint through to the
23 present.

24 34. Defendants, their officers, and directors are excluded from the Plaintiff Class.

25 35. This action has been brought and may be properly maintained as a class action
26 pursuant to California Code of Civil Procedure Section 382 because there is a well-defined
27 community of interest in the litigation and the proposed class is easily ascertainable as follows:

- 28 a. Numerosity: A class action is the only available method for the fair and efficient
adjudication of this controversy. The members of the Plaintiff Class are so numerous that
joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff
is informed and believes and, on that basis, alleges that there are sufficient Class Members
to meet the numerosity requirement. Membership in the Class will be determined upon
analysis of employee and payroll, among other, records maintained by Defendants.

- 1 b. Commonality: Representative Plaintiff and Class Members share a community of interests,
2 in part, since there are numerous common questions and issues of fact and law which
3 predominate over any questions and issues solely affecting individual members, thereby
4 making a class action superior to other available methods for the fair and efficient
5 adjudication of the controversy. Consequently, class certification is proper under Section
6 382. These common questions include, but are not necessarily limited to:
- 7 i. Whether Defendants violated California Labor Code sections 226.7 and
8 512 by failing to provide Class Members, for each work period of more
9 than five hours per day, with an off-duty meal period of at least 30
10 minutes, and, for each work period of four hours or major fraction thereof,
11 a net ten minute rest period, without any compensation therefore;
 - 12 ii. Whether Defendants required Plaintiff and other Class Members to remain
13 on-duty during meal periods despite not having lawful on-duty meal
14 period agreements with said employees;
 - 15 iii. Whether Defendants violated California Labor Code sections 204, 510,
16 1194, 1197, 1198, and the applicable Industrial Welfare Commission
17 Wage Order by failing to provide Class Members minimum wages and
18 overtime premium wages, including double time wages;
 - 19 iv. Whether Defendants failed to provide and maintain accurate itemized
20 wage statements for the Class Members;
 - 21 v. Whether Defendants failed to pay timely wages to the Class Members
22 during their employment;
 - 23 vi. Whether Class Members are entitled to “waiting time” penalties, pursuant
24 to California Labor Code sections 201-204;
 - 25 vii. Whether Defendants violated California Business and Professions Code
26 section 17200, *et seq.* by failing to comply with the legal requirements
27 alleged here including, without limitation, the requirement that an
28 employer (1) pay meal period premiums to its employees who worked in
excess of five consecutive hours without a meal period, (2) pay rest period
premiums to its employees for each four hour period (or major fraction
thereof) worked without a rest period, (3) pay minimum and overtime
wages to employees working more than 8 hours in a single day, 12 hours
in a single day, or 40 hours in a workweek;
 - viii. Whether Defendants’ treatment of the Class Members violates the applicable Wage
Order, the California Labor Code, the Civil Code, and/or the Business &
Professions Code; and
 - ix. Whether class-wide injunctive relief is an appropriate remedy by which to
prevent and/or halt the violations alleged herein from continuing;
 - x. Whether defendant COM TAM THIEN HUONG II is an alter ego of
NGUYEN such that its separate corporate existence should be disregarded
and NGUYEN held personally liable for COM TAM THIEN HUONG II’s
debts owed to creditors.
- c. Typicality: Representative Plaintiff’s claims are typical of the claims of Class Members.
Representative Plaintiff and Class Members sustained damages arising out of and caused by
Defendants’ common course of conduct in violation of the law, as alleged herein.

1 d. Superiority of a Class Action: Since the damages suffered by individual Class Members,
2 while not inconsequential, may be relatively small, the expense and burden of individual
3 litigation by each member makes or may make it impractical for Class Members to seek
4 redress individually for the wrongful conduct alleged herein. Should separate actions be
5 brought, or be required to be brought, by each individual Class Member, the resulting
6 multiplicity of lawsuits would cause undue hardship and expense for the Court and the
litigants. The prosecution of separate actions would also create a risk of inconsistent rulings
that might be dispositive of the interests of other Class Members who are not parties to the
adjudications and/or may substantially impede their ability to adequately protect their
interests.

7 e. Adequacy of Representation: Representative Plaintiff in this class action is an adequate
8 representative of Class Members in that Representative Plaintiff's claims are typical of
9 those of Class Members and the Representative Plaintiff has the same interest in the
10 litigation of this case as the Class Members. Representative Plaintiff is committed to
11 vigorous prosecution of this case and has retained competent counsel who are experienced
in conducting litigation of this nature. Representative Plaintiff is not subject to any
individual defenses unique from those conceivably applicable to Class Members as a
whole. Representative Plaintiff anticipates no management difficulties in this litigation.

12 COMMON FACTUAL ALLEGATIONS

13 36. During his employment, Representative Plaintiff routinely worked for Defendants
14 without being provided with a timely thirty-minute uninterrupted, duty-free meal period during
15 meal period eligible shifts, and without being paid one (1) hour of pay at the employee's regular
16 rate of compensation for each work day that the meal period was not provided. Representative
17 Plaintiff alleges, on information and belief, these meal break violations were the result of policies
18 and procedures that applied uniformly to all Class Members during the Class Period.

19 37. During his employment, Representative Plaintiff routinely worked for Defendants
20 without being provided with a timely uninterrupted, duty-free ten-minute rest period every four
21 hours during eligible shifts, and without being paid one (1) hour of pay at the employee's regular
22 rate of compensation for each work day that the rest period was not provided. Representative
23 Plaintiff alleges, on information and belief, these rest period violations were the result of policies
24 and procedures that applied uniformly to all Class Members during the Class Period.

25 38. Representative Plaintiff often worked more than 8 hours in one single day, 12 hours
26 in one single day, or more than 40 hours in a week and was not paid overtime premiums. As a
27 result, Defendants failed to pay Representative Plaintiff and Class Members all legally required
28 wages, including minimum wages and overtime premiums, to which they were entitled.

Representative Plaintiff alleges, on information and belief, the overtime violations were the result of policies and procedures that applied uniformly to all Class Members during the Class Period.

39. Plaintiff did not receive wage statements that accurately reflected all wages owed and did not include all information required to be included by law. For example, Plaintiff's wage statement did not reflect overtime premiums, meal or rest period premium pay, and other compensation that should have been paid. Representative Plaintiff alleges, on information and belief, such violations were the result of policies and procedures that applied uniformly to all Class Members during the Class Period.

40. Furthermore, after Representative Plaintiff's employment with Defendants ended on or around August 18, 2019, Representative Plaintiff was not paid all his wages owed (including but not limited to minimum and overtime wages) with more than thirty days elapsing since the end of his employment with Defendants.

41. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Class Members have sustained damages, as described above, including compensation for unpaid premium wages for overtime, missed meal periods, and/or missed rest breaks in an amount to be established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled to recover costs and attorneys' fees pursuant to *inter alia*., Title 8 of the California Code of Regulations, California Business and Professions Code sections 17200, *et seq.*, California Code of Civil Procedure Section 1021.5.

42. Representative Plaintiff seeks injunctive relief prohibiting Defendants from engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members under California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt of Defendants' unlawful conduct. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled to recover costs and attorneys' fees, pursuant to statute.

First Cause of Action
Failure to Provide Meal Periods or Pay Meal Period Premiums
(Labor Code §§ 204, 223, 226.7, 512 and 1198)
(Against all Defendants)

43. Representative Plaintiff re-alleges and incorporates each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

44. Labor Code Section 204 provides that all wages earned by any person in any employment become due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays, except that 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.

45. Labor Code Section 223 states “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

46. In relevant part, Labor Code Section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

47. California Labor Code Section 512(a) and applicable California Wage Orders set forth the minimum requirements for the provision of meal periods to non-exempt employees in California. The applicable wage order indicates that “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.” Furthermore, the wage order indicates that “an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.” The meal period requirement also appears in Section 11 of the applicable Wage Order, and is incorporated herein through reference.

48. California Labor Code section 558.1, subdivision (a) provides that “[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated any

provision” of the applicable IWC Wage Order, as well as Labor Code sections 203, 226, 226.7, 1193.6, 1194, or 2802, “may be held liable as the employer for such violation.”

49. California Labor Code section 558.1, subdivision (b) further provides that the term “other person acting on behalf of an employer” shall mean “a natural person who is an owner, director, officer, or managing agent of the employer.” The term “managing agent” shall have the same meaning as defined in Civil Code section 3294, subdivision (b).

50. Representative Plaintiff is informed and believes, and upon such information and belief, alleges NGYUEN at all relevant times herein, acted as one of the owners, directors, officers, and/or managing agents of COM TAM THIEN HUONG II

51. Pursuant to the above provisions, Representative Plaintiff and Class Members are entitled to meal periods in which they were relieved of all job duties. Instead, Representative Plaintiff believes, and thereupon alleges, Defendants (including NGUYEN) did not provide Representative Plaintiff and Class Members with sufficient timely, thirty-minute uninterrupted, off-duty meal periods. Moreover, Defendants had no valid “on duty” written meal period agreement and/or waiver with Representative Plaintiff or the putative Class Members nor is such an agreement or waiver applicable here as the nature of Class Members’ work did not prevent them from being relieved of all duty. Thus, Defendants violated California Labor Code sections 226.7 and 512 and applicable Wage Orders.

52. Representative Plaintiff is informed and believes, and thereupon alleges, that Defendants required Representative Plaintiff and Class Members to work without receiving all timely off-duty meal periods to which they were entitled.

53. Defendants’ unlawful acts deprived Representative Plaintiff and Class Members of lawful meal periods, so they are entitled to recovery pursuant to California Labor Code section 226.7, subdivision (b), in the amount of one additional hour of pay at the employee's regular rate of compensation for each day on which one or more meal periods was not provided.

Wherefore, the Representative Plaintiff prays for judgment as set forth below.

Second Cause of Action
Failure to Authorize and Permit Rest Breaks or Pay Rest Break Premiums
(Labor Code §§ 204, 223, and 226.7)
(Against all Defendants)

1 54. Representative Plaintiff re-alleges and incorporates each and every allegation of the
2 preceding paragraphs with the same force and effect as though fully set forth herein.

3 55. Labor Code Section 204 provides that all wages (except as provided for under
4 Labor Code sections 201- 202) earned by any person in any employment become due and payable
5 twice during each calendar month, on days designated in advance by the employer as the regular
6 paydays, except that wages earned for labor in excess of the normal work period shall be paid no
7 later than the payday for the next regular payroll period.

8 56. Labor Code Section 223 states, “[w]here any statute or contract requires an
9 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
10 while purporting to pay the wage designated by statute or by contract.”

11 57. In relevant part, Section 2 of the applicable Wage Order states, “Hours worked”
12 means the time during which an employee is subject to the control of an employer, and includes all
13 the time the employee is suffered or permitted to work, whether or not required to do so.

14 58. In relevant part, Labor Code Section 1198 states, “The employment of any
15 employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

16 59. Section 12 of the applicable Wage Order indicates that “[e]very employer shall
17 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
18 middle of each work period. The authorized rest period time shall be based on the total hours
19 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
20 thereof. However, a rest period need not be authorized for employees whose total daily work time
21 is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours
22 worked for which there shall be no deduction from wages.”

23 60. California Labor Code section 558.1, subdivision (a) provides that “[a]ny employer
24 or other person acting on behalf of an employer, who violates, or causes to be violated any
25 provision” of the applicable IWC Wage Order, as well as Labor Code sections 203, 226, 226.7,
26 1193.6, 1194, or 2802, “may be held liable as the employer for such violation.”

27 61. California Labor Code section 558.1, subdivision (b) further provides that the term
28

1 “other person acting on behalf of an employer” shall mean “a natural person who is an owner,
2 director, officer, or managing agent of the employer.” The term “managing agent” shall have the
3 same meaning as defined in Civil Code section 3294, subdivision (b).

4 62. Representative Plaintiff is informed and believes, and upon such information and
5 belief, alleges NGUYEN at all relevant times herein, acted as one of the owners, directors, officers,
6 and/or managing agents of COM TAM THIEN HUONG II and is therefore liable pursuant to
7 Labor Code Section 558.1.

8 63. Defendants’ unlawful acts deprived Representative Plaintiff and Class Members of
9 rest breaks, so they are entitled to recovery pursuant to Section 12(B) of the applicable IWC Wage
10 Order(s) and Labor Code Section 226.7, in the amount of one (1) additional hour of pay at the
11 employee’s regular rate of compensation for each such off-duty rest period that is/was not provided
12 to Class Members.

13 Wherefore, the Representative Plaintiff prays for judgment as set forth below.

14 **Third Cause of Action**
15 **Failure to Pay Overtime Wages**
16 **(Violation of California Wage Order and Labor Code §§ 204, 223, 510, 1194, 1197**
17 **and 1198)**
18 **(Against all Defendants)**

19 64. Representative Plaintiff incorporates in this cause of action each and every
20 allegation of the preceding paragraphs with the same force and effect as though fully set forth
21 herein.

22 65. At all relevant times, Defendant was aware of, and were under a duty to comply
23 with, the provisions of the California Labor Code including, but not limited to, Labor Code
24 sections 510, 1194, 1198, 1771, and 1774.

25 66. In relevant part, Section 2 of the Wage Order states, “Hours worked” means the
26 time during which an employee is subject to the control of an employer, and includes all the time
27 the employee is suffered or permitted to work, whether or not required to do so.

28 67. Labor Code Section 204 provides that all wages (except as provided for under
Labor Code sections 201- 202) earned by any person in any employment become due and payable
twice during each calendar month, on days designated in advance by the employer as the regular

1 paydays, except that wages earned for labor in excess of the normal work period shall be paid no
2 later than the payday for the next regular payroll period.

3 68. Labor Code Section 223 states “[w]here any statute or contract requires an employer
4 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
5 purporting to pay the wage designated by statute or by contract.”

6 69. California Labor Code section 510(a), in pertinent part, provides: “Any work in
7 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and
8 the first eight hours worked on the seventh day of work in any one workweek shall be compensated
9 at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work
10 in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular
11 rate of pay for an employee.”

12 70. California Labor Code section 1194(a), in pertinent part, provides:
13 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the
14 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
15 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
16 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

17 71. Labor Code Section 1194.2 entitles an employee receiving less than the minimum
18 wage to recover liquidated damages in an amount equal to the unpaid minimum wages and interest
19 thereon.

20 72. Labor Code Section 1197 makes it unlawful to pay an employee less than the
21 minimum wage, as established by the Industrial Welfare Commission, for each hour worked

22 73. California Labor Code Section 1198, in pertinent part, provides: “The maximum
23 hours of work and the standard conditions of labor fixed by the commission shall be the maximum
24 hours of work and the standard conditions of labor for employees. The employment of any
25 employee for longer hours than those fixed by the order or under conditions of labor prohibited by
26 the order is unlawful.”

27 74. In relevant part, Section 3 of the applicable Wage Order states,

28 a. (A) Daily Overtime - General Provisions

1 (1) The following overtime provisions are applicable to employees 18 years of age or over
2 and to employees 16 or 17 years of age who are not required by law to attend school and
3 are not otherwise prohibited by law from engaging in the subject work. Such employees
4 shall not be employed more than eight (8) hours in any workday or more than 40 hours in
5 any workweek unless the employee receives one and one-half (1 1/2) times such
6 employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight
7 (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any
8 workday or more than six (6) days in any workweek is permissible provided the employee
9 is compensated for such overtime at not less than:

10 (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
11 worked in excess of eight (8) hours up to and including 12 hours in any workday, and
12 for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
13 workweek; and,

14 (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours
15 in any workday and for all hours worked in excess of eight (8) hours on the seventh
16 (7th) consecutive day of work in a workweek.

17 75. During the Class Period, Representative Plaintiff and Class Members worked, on
18 many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek.

19 76. During the Class Period, and as more fully alleged herein, Defendants refused
20 and/or failed to compensate Representative Plaintiff and Class Members for all of the overtime
21 wages earned, in violation of the applicable IWC Wage Order and provisions of the California
22 Labor Code.

23 77. By refusing to compensate Representative Plaintiff and Class Members for all
24 wages earned, Defendants violated those California Labor Code provisions cited herein as well as
25 the applicable IWC Wage Order(s).

26 78. As a direct and proximate result of Defendants' unlawful conduct, as set forth
27 herein, Representative Plaintiff and the Class Members sustained damages, including for unpaid
28 premium overtime wages, in an amount to be established at trial, and are entitled to recover
attorneys' fees and costs of suit.

Wherefore, the Representative Plaintiff prays for judgment as set forth below.

Fourth Cause of Action
Failure to Provide Accurate Itemized Wage Statements
(Labor Code § 226)
(Against all Defendants)

79. Representative Plaintiff re-alleges and incorporates each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

80. Labor Code section 226(a) requires an employer to provide an employee, either semimonthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

81. As alleged herein, Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) by not providing Class Members with accurate wage statements that included all of the required information.

82. By failing to keep adequate records, as required by Labor Code section 226(a), Defendants injured Representative Plaintiff and Class Members, and made it confusing and difficult to calculate the unpaid wages earned (including wages, interest, and penalties thereon) due to Representative Plaintiff and Class Members.

83. Representative Plaintiff and Class Members seek to recover the statutory penalties provided by Labor Code section 226(a) for the wage statement violations committed by Defendants.

Wherefore, the Representative Plaintiff prays for judgment as set forth below.

Fifth Cause of Action
Waiting Time Penalties
(Labor Code §§ 201, 202, 203)
(Against all Defendants)

84. Representative Plaintiff re-alleges and incorporates each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

85. Labor Code Section 201 requires an employer to pay all earned and unpaid wages to a discharged employee immediately at the time of discharge.

86. Labor Code Section 202 requires an employer to pay all earned and unpaid wages to an employee who quits after giving at least 72 hours-notice all earned and unpaid wages at the time of quitting.

87. Labor Code Section 202 requires an employer to pay all earned and unpaid wages to an employee who quits after less than 72 hours notice all earned and unpaid wages within 72 hours of giving notice of quitting.

88. Labor Code Section 203 provides that an employee's wages shall continue as a penalty from when they first became due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

89. Labor Code Section 558.1, provides that an “employer,” and any “other person acting on behalf of an employer, who violates, or causes to be violated” any of those wage statutes may share liability. “Other person” is defined as “a natural person who is an owner, director, officer, or managing agent.” Representative Plaintiff is informed and believes, and upon such information and belief, alleges that NGUYEN at all relevant times herein, acted as one of the owners, directors, officers, and/or managing agents of COM TAM THIEN HUONG II. Plaintiff further alleges that NGUYEN qualifies as “a person acting on behalf of an employer, who violates, or causes to be violated” the provisions of the applicable IWC Wage Order and Labor Provisions, as described herein (including but not limited to Labor Code Sections 203, 226, and 1194).

1 Accordingly, Plaintiff alleges that NGUYEN should be held personally liable for the violations
2 alleged herein pursuant to Labor Code Section 558.1.

3 90. Plaintiff and many of the proposed Class Members are no longer working for
4 Defendants. These former employees were either discharged, quit, or otherwise terminated their
5 employment with Defendant.

6 91. Defendants' failure to pay Plaintiff and Class Members who are no longer working
7 for Defendants all wages owing to these former employees, as alleged herein, were willful.

8 92. Plaintiff and other Class Members no longer working for Defendant are therefore
9 entitled to penalties against Defendant, in an amount to be proven at trial, pursuant to Labor Code
10 Section 203, which provides that an employee's wages shall continue as a penalty until paid, for a
11 period of up to thirty days from the time they were due.

12 Wherefore, the Representative Plaintiff prays for judgment as set forth below.

13 **Sixth Cause of Action**
14 **Unfair Business Practices Under the Unfair Competition Law**
15 **(Business & Professions Code §§ 17200-17208)**
16 **(Against All Defendants)**

17 93. Representative Plaintiff re-alleges and incorporates each and every allegation of the
18 preceding paragraphs with the same force and effect as though fully set forth herein.

19 94. California Business and Professions Code sections 17200, *et seq.* prohibits unfair
20 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

21 95. Beginning at an exact date unknown to Representative Plaintiff, but continuing
22 during the Class Period, Defendants committed unlawful acts as defined by Business and
23 Professions Code Section 17200. Defendants' unlawful and unfair business practices include, but
24 are not necessarily limited to, violations of the requirements of the Labor Code and applicable
25 Wage Order(s) sections described herein.

26 96. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful
27 and/or fraudulent business practice, as set forth in Business and Professions Code sections 17200-
28 17208. Specifically, Defendants conducted business activities while failing to comply with the
legal mandates herein.

1 97. Defendants' knowing failure to adopt policies in accordance with, and/or to adhere
2 to these laws, all of which are binding upon and burdensome on its competitors, engenders an
3 unfair competitive advantage for Defendants, thereby constituting an unfair business practice, as
4 set forth in Business and Professions Code Section 17208.

5 98. Business and Professions Code Section 17203 provides that the Court may restore
6 to any person in interest any money or property which may have been acquired by means of such
7 unfair competition. As a direct and proximate result of the aforementioned acts, Representative
8 Plaintiff and Class Members were injured and suffered the loss of money in the amount of, inter
9 alia, unpaid minimum wages and overtime compensation as well as compensation for missed meal
10 periods and/or rest breaks they were otherwise entitled to receive. Representative Plaintiff and
11 Class Members are entitled to restitution pursuant to Business and Professions Code sections
12 17203 and 17208 for all compensation unlawfully withheld from them as a result of Defendants'
13 unlawful and unfair conduct.

14 99. Representative Plaintiff's success in this action will enforce important rights
15 affecting the public interest. Representative Plaintiff and the Plaintiff Class seek, and are entitled
16 to, injunctive relief as well as all other appropriate equitable remedies. Injunctive relief is
17 necessary and appropriate to prevent Defendants from repeating the wrongful business practices
18 alleged herein.

19 Wherefore, Representative Plaintiff prays for judgment as set forth below.

20 **Seventh Cause of Action**
21 **Recovery Under Private Attorneys General Act (PAGA)**
22 **(Labor Code § 2698, *et seq.*)**
23 **(Against all Defendants)**

24 100. Representative Plaintiff re-alleges and incorporates each and every allegation of the
25 preceding paragraphs with the same force and effect as though fully set forth herein.

26 101. Representative Plaintiff, as an aggrieved employee, brings this claim under
27 California Labor Code section 2698-2699 on behalf of himself and all other current or former
28 employees employed by Defendants as non-exempt restaurant employees in California at any time
for which recovery is authorized under Labor Code section 2698-2699, *et seq.* Pursuant to
California Labor Code Section 2699.3, Representative Plaintiff sent notice by Certified Mail to the

1 Labor and Workforce Development Agency of the specific provisions of the Labor Code that have
2 been violated, including the facts and theories to support the violations. Representative Plaintiff
3 thus will have complied with the Private Attorneys General Act notice requirement when and if the
4 Labor and Workforce Development Agency notifies Representative Plaintiff that the agency will
5 not investigate the claim, or if the required time limit for such response passes with no response.
6 Plaintiff hereby reserves the right to amend this Complaint following the expiration of the notice
7 period to the LWDA.

8 102. As alleged above, Defendants have violated the provisions of the Labor Code,
9 including failure to properly pay minimum wage and overtime wages for all hours worked, failure
10 to pay wages owed in a timely manner, failure to provide accurate wage statements, and failure to
11 provide timely duty-free meal and rest periods or compensation for meal and rest period violations.
12 Representative Plaintiff seeks recovery of damages resulting from said violations on behalf of
13 himself and all other current or former employees employed by Defendant as non-exempt Class
14 Members in California at any time for which recovery is authorized under Labor Code sections
15 2698-2699.

16 103. Pursuant to California Labor Code Section 2699, Representative Plaintiff also seeks
17 recovery of all penalties for Defendants' above-described violations of the Labor Code and
18 Industrial Welfare Commission Wage Orders that are available under PAGA. Such penalties for
19 which Representative Plaintiff now seeks recovery include, but are not limited to, those set forth in
20 Labor Code sections 201-203 (failure to pay wages due in a timely manner to terminated or
21 quitting employees), 226 (failure to provide proper pay statements), 226.7 and 512 (failure to
22 provide meal and rest periods), 558 (for causing the labor code violations pled herein), 1194 and
23 1197 (for failing to pay a minimum wage for all hours worked), and 2926 and 2927 (failing to pay
24 compensation for services upon separation).

25 104. Labor Code Section 558.1, provides that an "employer," and any "other person
26 acting on behalf of an employer, who violates, or causes to be violated" any of those wage statutes
27 may share liability. "Other person" is defined as "a natural person who is an owner, director,
28 officer, or managing agent." Representative Plaintiff is informed and believes, and upon such

1 information and belief, alleges that NGUYEN at all relevant times herein, acted as one of the
2 owners, directors, officers, and/or managing agents of COM TAM THIEN HUONG II. Plaintiff
3 further alleges that NGUYEN qualifies as “a person acting on behalf of an employer, who violates,
4 or causes to be violated” the provisions of the applicable IWC Wage Order and Labor Provisions,
5 as described herein (including but not limited to Labor Code Sections 203, 226, and 1194).
6 Accordingly, Plaintiff alleges that NGUYEN should be held personally liable on this claim
7 pursuant to Labor Code Section 558.1.

8 105. Representative Plaintiff requests an award of attorneys’ fees and costs, including as
9 authorized under California Labor Code Section 2699.

10 Wherefore, Representative Plaintiff prays for judgment as set forth below.

11
12 **RELIEF SOUGHT**

13 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the proposed
14 Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of
15 them, jointly and separately, as follows:

16 1. That the Court declare, adjudge, and decree that this action is a proper class action
17 and certify the proposed class and/or any appropriate subclasses under Code of Civil Procedure
18 Section 382;

19 2. That the Court declare, adjudge, and decree that Defendants violated the provisions
20 of the Labor Code and the applicable California Industrial Welfare Commission Wage Order(s) as
21 to the Representative Plaintiff and Class Members as alleged herein;

22 3. That the Court make an award to the Plaintiff and Plaintiff Class of unpaid
23 minimum wage compensation and liquated damages (pursuant to Labor Code sections 510, 1194,
24 1194.2);

25 4. That the Court make an award to the Plaintiff and Plaintiff Class of unpaid overtime
26 and double-time wage compensation (pursuant to Labor Code sections 510, 1194);

27 5. That the Court make an award to Representative Plaintiff and the Plaintiff Class of
28 one hour of pay at each employee’s regular rate of compensation for each workday on which a

1 meal period(s) was not provided (pursuant to Labor Code Section 226.7);

2 6. That the Court make an award to Representative Plaintiff and the Plaintiff Class of
3 one hour of pay at each employee's regular rate of compensation for each workday on which a rest
4 period(s) was not provided (pursuant to Labor Code Section 226.7);

5 7. That the Court make an award to the Representative Plaintiff and Plaintiff Class of
6 "waiting time" penalties (pursuant to Labor Code Section 203);

7 8. That the Court make an award to the Representative Plaintiff and Plaintiff Class for
8 failure to provide accurate wage statements (pursuant to Labor Code Section 226);

9 9. That the Court order Defendants to pay restitution to Representative Plaintiff and
10 Plaintiff Class, pursuant to Business and Professions Code sections 17200-17208;

11 10. That the Court enjoin Defendants, ordering them to cease and desist from unlawful
12 activities in violation of Business and Professions Code Section 17200, *et seq.*;

13 11. That the Court order Defendants to pay penalties pursuant to the Private Attorneys
14 General Act, Labor Code sections 2698-2699, *et seq.*;

15 12. That the Court find that Defendant Nguyen is personally liable to Plaintiff for the
16 damages alleges herein, either as a joint employer of Plaintiff and/or pursuant to Labor Code
17 Sections 558 and/or 558.1;

18 13. For all other Orders, findings and determinations identified and sought in this
19 Complaint;

20 14. For interest on the amount of any and all economic losses, at the prevailing legal
21 rate;

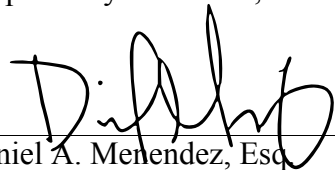
22 15. For reasonable attorneys' fees, pursuant to Title 8 of the California Code of
23 Regulations, the Labor Code, Business and Professions Code sections 17200, *et seq.*, Code of Civil
24 Procedure Section 1021.5.; and;

1 16. For costs of suit and any and all such other relief as the Court deems just and
2 proper.

3
4 Dated: February 7, 2020

Respectfully submitted,

5
6 By:


Daniel A. Menendez, Esq.
Counsel for Representative Plaintiff and the
Plaintiff Class

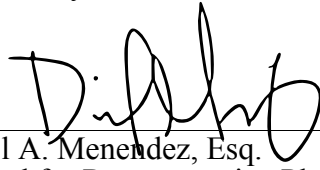
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10 **DEMAND FOR JURY TRIAL**

11 Representative Plaintiff and the proposed Plaintiff Class hereby demand a jury trial for each
12 cause of action for which they are entitled to a jury trial.

13
14 Dated: February 7, 2020

Respectfully submitted,

15
16 By:


Daniel A. Menendez, Esq.
Counsel for Representative Plaintiff and the
Plaintiff Class