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VICTOR CORONA & ROSA ALCAUTE

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/09/2020
Clerk of the Court
BY: MADONNA CARANTO
Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY AND CITY OF SAN FRANCISCO

VICTOR CORONA; and ROSA ALCAUTE,

Plaintiffs,

v.

SAN FRANCISCO BREWING CO, LLC; and DOES
1 through 10, inclusive,

Defendants.

Case No.: CGC-20-583125

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- (1) FAILURE TO PAY ALL WAGES
- (2) FAILURE TO PAY OVERTIME
COMPENSATION
- (3) FAILURE TO PERMIT MEAL
PERIODS
- (4) FAILURE TO PERMIT REST PERIODS
- (5) FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS
- (6) WAITING TIME PENALTIES
- (7) CONVERSION
- (8) PRIVATE ATTORNEY GENERAL
ACT, CAL. LAB. CODE 2698, ET SEQ.
- (9) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUSINESS AND
PROFESSIONS CODE §§ 17200 ET. SEQ.

JURY TRIAL DEMANDED

1. Plaintiffs VICTOR CORONA (hereinafter “CORONA”) and ROSA ALCAUTE (hereinafter “ALCAUTE”) (collectively “PLAINTIFFS”), submit this Complaint as follows:

I. INTRODUCTION

2. PLAINTIFFS bring this action against Defendants SAN FRANCISCO BREWING CO, LLC (hereinafter “DEFENDANT”), and DOES 1-10 (hereinafter “DOES”) (collectively “DEFENDANTS”) on behalf of themselves, and the class of similarly situated current and former aggrieved employees of DEFENDANTS, for compensatory damages, statutory damages, civil penalties, prejudgment interest, attorney’s fees and costs, restitution, and other appropriate and just relief.

3. The Private Attorney General Act of 2004 (“PAGA”) codified in Cal. Labor Code § 2698 et seq. allows a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency (LWDA). The aggrieved employee is allowed to seek civil penalties not only for violations that he or she suffered but also for violations of “other current or former employees” pursuant to Cal. Labor Code 2699(a).

4. The class period (“CLASS PERIOD”) is four years from the filing of this action, through the entry of final judgment in this action.

II. JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court because the alleged damages exceed twenty-five thousand dollars (\$25,000.00).

6. Venue is proper because DEFENDANTS' principal place of business is located within the county and city of San Francisco, and PLAINTIFFS worked for DEFENDANTS in the county and city of San Francisco.

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III. PARTIES

7. PLAINTIFFS are individuals.

8. DEFENDANT is a California limited liability company with its principal place of business located at 3150 Polk Street, San Francisco. DEFENDANT owns and operates a brewery and restaurant.

9. DEFENDANTS exercised direct control over the wages, hours, and working conditions of PLAINTIFFS.

10. The actions of PLAINTIFFS' supervisors, managers, and/or other employees of DEFENDANTS were ratified by DEFENDANTS. At all relevant times, the employees, owners, supervisors, agents, and managers of DEFENDANTS acted within the course and scope of their employment.

11. DEFENDANTS were, at all relevant times, PLAINTIFFS' employer covered by California's Labor Code and Industrial Welfare Commission Wage Order No. 5.

12. PLAINTIFFS are ignorant as to the true names and capacities of defendants sued herein as "DOES 1 – 10 inclusive" and therefore sue these by such fictitious names and capacities. PLAINTIFFS will seek leave of court to amend this Complaint and include the actual names of these fictitiously named DOE defendants if and when they are ascertained.

IV. STATEMENT OF FACTS

13. CORONA was employed by DEFENDANTS from approximately June 8, 2018 to July 22, 2019. CORONA was a line cook and pizza maker for DEFENDANTS.

1 14. ALCAUTE was employed by DEFENDANTS from approximately September 4, 2018
2 to July 22, 2019. ALCAUTE was a prep cook, salad prep, dishwasher, and kitchen staff for
3 DEFENDANTS.

4 15. During the course of their employment with DEFENDANTS, PLAINTIFFS regularly
5 worked more than six (6) hours per day. On several occasions, CORONA worked more than eight (8)
6 hours per day.

7 16. DEFENDANTS, as a matter of policy and practice, made PLAINTIFFS and putative
8 class members to work off the clock at the beginning of their scheduled shift. During these minutes of
9 off-the-clock work, PLAINTIFFS and putative class members walked into DEFENDANTS' premises
10 from the back door, walked to DEFENDANTS' dressing room, waited for the dressing room to be
11 vacant, and changed into their work uniforms before clocking in for the start of their shift.
12 PLAINTIFFS and putative class members are owed wages at regular and overtime rates because of
13 DEFENDANTS' unlawful off the clock practice.

14 17. DEFENDANTS, as a matter of policy and practice, made PLAINTIFFS and putative
15 class members to work off the clock at the end of their scheduled shift. During these minutes of off-
16 the-clock work, PLAINTIFFS walked to DEFENDANTS' dressing room and changed out of their work
17 uniforms after clocking out for the end of their shift. PLAINTIFFS and putative class members are
18 owed wages at regular and overtime rates because of DEFENDANTS' unlawful off the clock practice.

19 18. Additionally, DEFENDANTS, as a matter of policy and practice, made PLAINTIFFS
20 and putative class members to work off the clock at the end of their scheduled shift. During these
21 minutes of off-the-clock work, PLAINTIFFS continued performing duties for DEFENDANTS after

1 clocking out. PLAINTIFFS and putative class members are owed wages at regular and overtime rates
2 because of DEFENDANTS' unlawful off the clock practice.

3 19. Additionally, on or about early 2019, DEFENDANTS informed PLAINTIFFS and
4 putative class members that they needed to clock out of work no later than the sixth hour of work
5 although PLAINTIFFS and putative class members continued working. PLAINTIFFS and putative
6 class members are owed wages for time worked during their scheduled meal breaks.

7 20. When CORONA and putative class members worked more than eight (8) hours in one
8 day and/or worked more than forty (40) hours in one workweek, DEFENDANTS failed to compensate
9 them for all overtime hours worked.

10 21. During the course of their employment, PLAINTIFFS and putative class members
11 worked shifts lasting more than five (5) hours without adequate meal periods. For example:

- 12 • On or about early 2019, DEFENDANTS had a policy of requiring PLAINTIFFS and putative
13 class members to punch in and out of meal breaks while working during that time, with the
14 result that no meal breaks were provided;
- 15 • On several occasions, PLAINTIFFS and putative class members were provided with less than
16 thirty (30) minute meal breaks; and
- 17 • On several occasions, PLAINTIFFS and putative class members' meal breaks were interrupted
18 to address work-related matters.

19 22. Furthermore, PLAINTIFFS and putative class members were not provided meal period
20 premium pay every time they were not provided a required meal period.

21 23. During the course of their employment, PLAINTIFFS and putative class members
worked without being provided required rest periods. For example:

- Rest breaks were not provided at all;
- 2nd rest breaks were not provided;

- On several occasions, PLAINTIFFS and putative class members were provided with less than ten (10) minute rest breaks; and
- On several occasions, PLAINTIFFS and putative class members' rest breaks were interrupted to address work-related matters.

24. Furthermore, PLAINTIFFS and putative class members were not provided rest period premium pay every time they were not provided the required amount of rest breaks.

25. During the course of their employment, DEFENDANTS failed to provide PLAINTIFFS and putative class members with all tips that they were entitled to receive. DEFENDANTS promised PLAINTIFFS and putative class members with receipt of tips when DEFENDANTS catered for private events. PLAINTIFFS and putative class members performed work for several catered private events for which DEFENDANTS failed to compensate them for tips.

26. PLAINTIFFS and putative class members are also informed and believe that DEFENDANTS misappropriated tips and engaged in tip pooling violations. PLAINTIFFS and putative class members complained to DEFENDANTS about tip pooling violations and not getting paid for all tips due. DEFENDANTS ignored PLAINTIFFS' complaints.

27. DEFENDANTS have failed to issue accurate, itemized wage statements to PLAINTIFFS and putative class members. The wage statements provide by DEFENDANTS have not been accurate in that they do not reflect all of their hours worked, all compensation earned, all tips PLAINTIFFS and putative class members were entitled to receive, and all break premiums owed.

28. PLAINTIFFS and separated putative class members are owed waiting time penalties because upon their separation, they were not paid all the money and compensations owed to them including all hours worked, and all meal and rest break premiums owed.

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V. CLASS ACTION ALLEGATIONS

29. **DEFINITION:** PLAINTIFFS bring this action on behalf of themselves and a putative class of similarly situated employees pursuant to California Code of Civil Procedure § 382. The class is defined as:

“All current and former hourly or non-exempt employees of DEFENDANTS who worked in the State of California at any time from four years from the date of the filing of this action through the entry of final judgment in this action.”

30. **NUMEROSITY AND ASCERTAINABILITY:** The members of the class are so numerous that joinder of all members would be impractical, if not impossible. PLAINTIFFS are informed and believe that there are over fifty (50) employees working for DEFENDANTS in California at any one time. The identity of putative class members is readily ascertainable by review of DEFENDANTS’ records. Notice can be provided to DEFENDANTS’ employees using techniques and a form of notice similar to those customarily used in class action lawsuits.

31. PLAINTIFFS are informed, believe, and based thereon allege that DEFENDANTS’ employees are denied: a) compensation for all hours worked; b) overtime compensation; c) meal period premium pay; d) rest period premium pay; e) accurate, itemized wage statements; f) all tips owed; and g) waiting time penalties.

32. **ADEQUACY OF REPRESENTATION:** PLAINTIFFS are members of the putative class. PLAINTIFFS do not have any conflicts of interest with other putative class members and will prosecute the case vigorously on behalf of the putative class. PLAINTIFFS will fairly and adequately represent and protect the interests of putative class members. PLAINTIFFS’ counsel is competent and experienced in litigating wage and hour class actions.

1 33. **SUPERIORITY OF CLASS ACTION:** A class action is superior to all other available
2 means of fair and efficient adjudication of this controversy. Individual joinder of all putative class
3 members is not practicable, and questions of law and fact common to the putative class predominate
4 over any questions affecting only individual members of the class. DEFENDANTS' employees have
5 been damaged and are entitled to recovery by reason of DEFENDANTS' unlawful policies and/or
6 practices described herein. Because the damages suffered by individual putative class members may be
7 relatively small, albeit significant, the expense and burden of individual litigation make it impractical
8 for most putative class members to seek individual redress for the wrongful conduct alleged. Class
9 action treatment will allow those similarly situated persons to litigate their claims in the manner that is
10 most efficient and economical for the parties and the judicial system.

11 34. The Labor Code and Wage Order No. 5 are broadly remedial in nature. These laws and
12 labor standards serve an important public interest in establishing minimum working conditions and
13 standards in California. These laws and labor standards protect the average working employee from
14 exploitation by employers who may seek to take advantage of superior economic conditions and
15 bargaining power in setting onerous terms and conditions of employment.

16 35. The nature of this action and the format of laws available to PLAINTIFFS and members
17 of the putative class identified herein make the class action format a particularly efficient and
18 appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an
19 individual lawsuit, the corporate DEFENDANTS would necessarily gain an unconscionable advantage
20 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with
21 their vastly superior financial and legal resources. Requiring each putative class member to pursue an
individual remedy would also discourage the assertion of lawful claims by employees who would be

disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

36. The prosecution of separate actions by individual putative class members, even if possible, would create a substantial risk of: (a) Inconsistent or varying adjudications with respect to individual putative class members against the DEFENDANTS, which would establish potentially incompatible standards of conduct for the DEFENDANTS; and/or (b) Adjudications with respect to individual putative class members which would, as a practical matter, be dispositive of the interest of the other putative class members not parties to the adjudications, or which would substantially impair or impede the ability of DEFENDANTS' aggrieved employees to protect their interests. Further, the claims of the individual members of the putative class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

37. **COMMON QUESTION OF LAW AND FACT:** There are questions of law and fact common to putative class members that predominate over any questions affecting only individual members of the class. These common questions of law and fact include:

38. Whether DEFENDANTS have failed to pay employees for all hours worked;

39. Whether DEFENDANTS have failed to pay employees overtime compensation;

40. Whether DEFENDANTS have failed to provide compensation to employees who were not provided rest periods in accordance with applicable law;

41. Whether DEFENDANTS have failed to provide compensation to employees who were not provided meal periods in accordance with applicable law;

1 42. Whether wage statements provided to DEFENDANTS' employees are adequate under
2 applicable law, and whether employees are entitled to receive statutory penalties from DEFENDANTS
3 for each wage statement violation committed;

4 43. Whether DEFENDANTS willfully failed to pay all wages due to DEFENDANTS'
5 employees who were discharged or quit, and whether such employees are entitled to receive statutory
6 penalties from DEFENDANTS for each violation committed; and

7 44. Whether DEFENDANTS unlawfully withheld and converted tips owed employees.

8 45. **TYPICALITY:** PLAINTIFFS' claims are typical to the claims of all members of the
9 putative class. PLAINTIFFS are members of the putative class and has suffered the alleged, class-wide
10 violations described herein.

11 **VI. CLAIMS FOR RELIEF**

12 **FIRST CAUSE OF ACTION**

13 *(Failure to Pay all Wages)*

14 46. PLAINTIFFS reallege and incorporate the above allegations by reference.

15 47. Pursuant to Wage Order No. 5 and Cal. Labor §§201, 202, 204, 500, 512 and 1194,
16 DEFENDANTS are required to compensate PLAINTIFFS and putative class members for all wages
17 owed.

18 48. During the CLAIM PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and
19 putative class members for all wages owed.
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1 49. PLAINTIFFS request for an award of compensatory damages in the amount of unpaid
2 wages owed to them and putative class members by DEFENDANTS, plus interest

3 50. As a result of DEFENDANTS' unlawful off the clock work policy, PLAINTIFFS and
4 putative class members have been deprived payment for all hours worked compensation in an amount
5 determined at trial, and are entitled to recovery of such amounts, plus interest thereon.

6 51. PLAINTIFFS, on behalf of themselves and similarly situated current and former
7 employees of DEFENDANTS, request relief as described below.

8 **SECOND CAUSE OF ACTION**

9 *(Unpaid Overtime Compensation)*

10 52. PLAINTIFFS reallege and incorporate the above allegations by reference.

11 53. Pursuant to Wage Order No. 5 and Cal. Labor Code §§ 500, 510, and 1194,
12 PLAINTIFFS and putative class members are owed overtime compensation for all overtime hours.

13 54. During the CLAIM PERIOD, DEFENDANTS failed to compensate PLAINTIFFS and
14 putative class members all owed overtime compensation.

15 55. PLAINTIFFS and putative class members worked overtime hours, but they were not
16 paid correctly because of the practice and policy used by DEFENDANTS to made PLAINTIFFS and
17 putative class members to work off the clock time.

18 56. As a result of DEFENDANTS' unlawful time recording policy, PLAINTIFFS and
19 putative class members have been deprived overtime compensation in an amount determined at trial,
20 and are entitled to recovery of such amounts, plus interest thereon, under Labor Code § 1194.

1 57. PLAINTIFFS, on behalf of themselves and similarly situated current and former
2 employees of DEFENDANTS, request relief as described below.

3 **THIRD CAUSE OF ACTION**

4 *(Failure to Pay Compensation for Missed & Improper Meal Periods)*

5 58. PLAINTIFFS reallege and incorporate the above allegations by reference.

6 59. Pursuant to Labor Code §§ 226.7(a), 512, and IWC Wage Order No. 5, DEFENDANTS
7 are required to authorize and permit PLAINTIFFS and putative class members a 30-minute meal period,
8 uninterrupted and away from work, for shifts between 5 and 10 hours long; and, a second meal period
9 is required for shifts exceeding ten hours.

10 60. DEFENDANTS have violated Labor Code §§ 226.7, 512, and IWC Wage Order No. 5
11 by failing to pay PLAINTIFFS and putative class members one (1) hour of pay at their regular rate of
12 pay for each workday meal periods were required but not provided.

13 61. PLAINTIFFS, on behalf of themselves and putative class members, request a relief as
14 described below.

15 **FOURTH CAUSE OF ACTION**

16 *(Failure to Pay Compensation for Missed & Improper Rest Periods)*

17 62. PLAINTIFFS reallege and incorporate the above allegations by reference.

18 63. Pursuant to Labor Code § 226.7(a) and IWC Wage Order No. 5, DEFENDANTS are
19 required to authorize and permit PLAINTIFFS and putative class members the opportunity to take rest
20 periods based upon total hours worked, at a rate of ten (10) minutes net rest time per four (4) hours
21 worked or major fraction thereof, with no deduction from wages.

1 64. DEFENDANTS failed and refused to authorize and permit PLAINTIFFS and putative
2 class members ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof,
3 in violation of Labor Code § 226.7(a) and IWC Wage Order No. 5.

4 65. DEFENDANTS have violated Labor Code § 226.7 and IWC Wage Order No. 5-2001 by
5 failing to pay PLAINTIFFS and putative class members one (1) hour of pay at their regular rate of pay
6 for each work day rest periods were required but not provided.

7 66. PLAINTIFFS, on behalf of themselves and putative class members, request a relief as
8 described below.

9 **FIFTH CAUSE OF ACTION**

10 *(Inaccurate Wage Statements)*

11 67. PLAINTIFFS reallege and incorporate the above allegations by reference.

12 68. As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFFS and putative
13 class members accurate, itemized wage statements showing all gross wages earned, including all hours
14 worked compensation, overtime compensation and meal and rest period premium pay owed, to
15 PLAINTIFFS and putative class members.

16 69. PLAINTIFFS and putative class members are entitled to payment from DEFENDANTS
17 of the greater of actual damages or \$50.00 for the initial pay period in which the violation occurred, and
18 \$100.00 for each subsequent violation, up to a maximum of \$4,000.00 per person pursuant to Labor
19 Code § 226, as well as reasonable attorney's fees and costs of suit.

20 70. PLAINTIFFS, on behalf of themselves and similarly situated current and former
21 employees of DEFENDANTS, request relief as described below.

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SIXTH CAUSE OF ACTION

(Waiting Time Penalties)

71. PLAINTIFFS reallege and incorporate the above allegations by reference.

72. California Labor Code § 201 requires an employer who discharges an employee to pay all compensation due to that employee immediately upon discharge.

73. California Labor Code § 202 requires an employer to pay all compensation due to employees who quit within 72 hours of that employee quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work.

74. Labor Code § 203 provides that if an employer willfully fails to pay compensation as required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 workdays.

75. DEFENDANTS willfully failed and refused to timely pay compensation and wages to PLAINTIFFS and other separated putative class members at the end of their employment.

76. As a result, DEFENDANTS are liable to PLAINTIFFS and other separated employees of DEFENDANTS for waiting time penalties pursuant to Labor Code § 203.

77. PLAINTIFFS, on behalf of themselves and other separated employees of DEFENDANTS, request relief as described below.

SEVENTH CAUSE OF ACTION

(Conversion)

78. PLAINTIFFS reallege and incorporate the above allegations by reference.

1 79. PLAINTIFFS and putative class members had a right to possess all gratuities given to
2 them by DEFENDANTS' customers.

3 80. DEFENDANTS substantially interfered with the rights of PLAINTIFFS and putative
4 class members to possess all gratuities given to them by DEFENDANTS' customers by knowingly or
5 intentionally taking possession of such gratuities.

6 81. PLAINTIFFS and putative class members did not consent to DEFENDANTS' action of
7 taking possession of customer gratuities owed to PLAINTIFFS and putative class members.

8 82. PLAINTIFFS and putative class members were harmed by DEFENDANTS'
9 misappropriation of tips and engagement in tip pooling violations.

10 83. DEFENDANTS' conduct was a substantial factor in causing harm to PLAINTIFFS and
11 putative class members.

12 84. PLAINTIFFS, on behalf of themselves and similarly situated current and former
13 employees of DEFENDANTS, request relief as described below.

14 **EIGHTH CAUSE OF ACTION**

15 By PLAINTIFFS Against DEFENDANTS

16 *(Private Attorney General Act)*

17 85. PLAINTIFFS reallege and incorporate by reference the paragraphs above as though
18 fully set forth herein.

19 86. Pursuant to Labor Code §2699, the foregoing violations of statutes and regulations
20 permit PLAINTIFFS to recover civil penalties through this action on behalf of themselves and other
21 current and former employees of DEFENDANTS. Labor Code §2699 provides in relevant part that:

1 (a) Notwithstanding any other provision of law, any provision of this code that provides for a
2 civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of
3 its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code,
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
5 of himself or herself and other current or former employees pursuant to the procedures specified in
6 Section 2699.3

7 (f) For all provisions of this code except those for which a civil penalty is specifically provided,
8 there is established a civil penalty for a violation of these provisions, as follows:...(2) If, at the time of
9 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
10 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
11 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

12 87. PLAINTIFFS have complied with the procedural requirements specified in Labor Code
13 §2699.3.

14 88. PLAINTIFFS have exhausted all administrative procedures required of them under
15 Labor Code §§2698, 2699 and 2699.3 and are justified as a matter of right in bringing forward this
16 cause of action.

17 89. On February 3, 2020, PLAINTIFFS, through their counsel, pursuant to the Labor Code
18 Private Attorneys General Act of 2004, sent via online submission a letter-notice of violations to the
19 LWDA and via certified mail to DEFENDANTS. A copy of this letter-notice is attached to this
20 Complaint as *Exhibit "A"*.

1 90. It has been over 65 days since PLAINTIFF submitted their letter-notice of violations to
2 the LWDA, and the LWDA has not provided notice to PLAINTIFFS of its intent to investigate the
3 alleged violations detailed herein. Therefore, PLAINTIFF may commence a civil action pursuant to
4 Labor Code §2699.3(B).

5 91. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code,
6 PLAINTIFFS seek all civil penalties, reasonable attorney's fees and costs available pursuant to Labor
7 Code §2699 et seq.

8 92. PLAINTIFFS are likely to have evidentiary support, after research and reasonable
9 opportunity for further investigation and discovery, to further penalties and violations. PLAINTIFFS
10 will amend this complaint, if appropriate, to seek all applicable penalties for violations which the
11 LWDA has failed to investigate and/or failed to issue a citation.

12 93. Pursuant to Labor Code §§ 2699(i) and 2699(g)(1), PLAINTIFFS should be awarded
13 twenty-five percent (25%) of all penalties due under California law, plus interest and reasonable
14 attorneys' fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties
15 due and awarded.

16 **NINETH CAUSE OF ACTION**

17 *(Business and Professions Code § 17200 et seq. violations.)*

18 94. California Business and Professions Code § 17200 et. seq. prohibits acts of unfair
19 competition including any "unlawful and unfair business practices."

20 95. The conduct of DEFENDANTS, as alleged herein, has been and continues to be unfair,
21 unlawful, and deleterious to PLAINTIFFS and putative class members, and to the general public.

1 96. PLAINTIFFS hereby seek to enforce important rights affecting the public interest within
2 the meaning of Code of Civil Procedure § 1021.5. PLAINTIFFS are a “persons” within the meaning of
3 Business and Professions Code § 17204 and therefore have standing to bring this suit for injunctive
4 relief and restitution.

5 97. The prompt and proper payment of wages is a fundamental public policy of the State of
6 California. It is also the public policy of the State to enforce minimum labor standards ensuring that
7 employees are not required or permitted to work under substandard and unlawful conditions and to
8 protect those employers who comply with the law from losing competitive advantage to other
9 employers that fail to comply with labor standards and requirements.

10 98. Through the conduct alleged herein, DEFENDANTS acted contrary to these public
11 policies and have thus engaged in unlawful and/or unfair business practices in violation of Business and
12 Professions Code §§ 17200 et. seq. depriving PLAINTIFFS and putative class members the rights,
13 benefits, and privileges guaranteed to employees under California law.

14 99. Beginning at an exact date unknown to PLAINTIFFS, but at least four years prior to the
15 filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent business acts
16 and practices as defined by Cal. Business & Professions Code § 17200, by engaging in the following:

- 17 1. Failing to pay all wages worked at the proper rate for PLAINTIFFS and putative class
18 members;
- 19 2. Failing to pay all overtime worked at the proper rate for PLAINTIFFS and putative class
20 members;
- 21 3. Failing and refusing to authorize and permit proper rest breaks to PLAINTIFFS and
 putative class members;
4. Failing to pay all accrued rest break compensation to PLAINTIFFS and putative class
 members;

5. Failing and refusing to authorize and permit proper meal breaks to PLAINTIFFS and putative class members;
6. Failing to pay all accrued meal break compensation to PLAINTIFFS and putative class members;
7. Failing to provide accurate itemized wage statements to PLAINTIFFS and putative class members;
8. Failing to pay all wages owed to PLAINTIFFS and putative class members at the end of their employment; and
9. Misappropriating tips owed to PLAINTIFFS and putative class members.

100. By engaging in these business practices, which are unfair and unlawful within the meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harm PLAINTIFFS and putative class members, and the general public, and have gained an unfair competitive edge.

101. Under Business and Professions Code § 17203, PLAINTIFFS are entitled to obtain restitution on behalf of themselves and others similarly affected by the unfair and/or unlawful business practices as set forth herein.

102. Pursuant to Business and Professions Code § 17202, PLAINTIFFS are entitled to specific reliefs enforcing the penalty provisions of various Labor Code sections for themselves and for members of the general public in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of DEFENDANTS and would promote unfair competition.

103. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent DEFENDANTS from continuing to engage in the unfair business practices as alleged herein.

104. PLAINTIFFS allege, on information and belief, that DEFENDANTS, and persons acting in concert with them, have committed and will continue to commit the above-described unlawful and/or unfair acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will result. PLAINTIFFS and other interested persons have no plain,

1 speedy, or adequate remedy at law, in that pecuniary compensation alone would not afford adequate
2 and complete relief. The above-described acts will cause great and irreparable damage to PLAINTIFFS
3 and other interested persons unless DEFENDANTS are restrained from committing further illegal acts.

4 105. PLAINTIFFS' success in this action will result in the enforcement of important rights
5 affecting the public and will confer a significant benefit upon the general public. Private enforcement of
6 the rights enumerated in this Complaint are necessary, as public agencies have only sought limited
7 enforcement of those rights, if any. The named PLAINTIFFS individually, and by and through counsel,
8 are incurring a financial burden in pursuing this action on behalf of the general public. PLAINTIFFS
9 seek to enjoin the above-referenced unlawful actions under California's Labor Code Industrial Welfare
10 Commission Wage Orders. Therefore, PLAINTIFFS seek an award of attorneys' fees and costs of suit
11 on this action pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws.

12 **VII. PRAYER**

13 WHEREFORE, PLAINTIFFS on their own behalf and on the behalf of the members of the
14 putative class, pray for judgment as follow:

- 15 1. For an order certifying the proposed class;
- 16 2. For compensatory and consequential damages;
- 17 3. Statutory damages;
- 18 4. Prejudgment interest pursuant to Labor Code § 218.6 accrued on all due and unpaid
19 overtime wages from the date that wages were due and payable, according to proof;
- 20 5. Pursuant to Wage Order No. 5, and Labor Code §§ 204, and 1194(a), an award in the
21 amount of unpaid wages, overtime wages, owed by DEFENDANTS for the four years
preceding the filing of this complaint, plus interest;

- 1 6. Compensation of one hour at the regular rate of pay for each rest period and meal period
2 denied in violation of Labor Code § 226.7 and Wage Order No. 5, according to proof;
3 7. All misappropriated tips;
4 8. Waiting time penalties pursuant to Labor Code §§ 201-203;
5 9. Civil penalties pursuant to Labor Code §2699 et seq.;
- 6 10. Attorneys' fees and costs made payable to the Liberation Law Group, P.C., pursuant to
7 Cal. Civ. Proc. Code § 1021.5, Cal. Labor Code §§ 218.5, 226(e), 1194, 2699(g)(1), and
8 other applicable laws;
9 11. Pursuant to Business & Professions Code § 17203, an award of restitution for the
10 unjustly amounts earned or retained DEFENDANTS by virtue of their engaging in unlawful
11 conduct, according to proof; and
12 12. Such other and further relief as the Court deems just and proper.

11 Dated: April 9, 2020

LIBERATION LAW GROUP, P.C.

13 By: _____

Ernesto Sanchez

Attorneys for PLAINTIFFS

16
17 **VIII. DEMAND FOR JURY TRIAL**

18 PLAINTIFFS hereby demand a trial by jury.
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20
21

1 Dated: April 9, 2020

LIBERATION LAW GROUP, P.C.

2
3 By:  _____

4 Ernesto Sanchez

5 Attorneys for PLAINTIFFS
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Exhibit A

Attorneys:

Arlo García Uriarte
Un Kei Wu
Ernesto Sánchez
Daniel P. Iannitelli
Nick Aguilar, Adm. in Fla.



Legal Assistants:

Andrea Ortiz
Lorenzo Barrera Cruz
Ivette Olguin
Vicent Uriarte
Crystina Arreola-Nunez
Mariana Segarra

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

February 3, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Victor Corona and Rosa Alcaute v. San Francisco Brewing Co. LLC

Dear PAGA Administrator:

Pursuant to the Private Attorneys General Act of 2004, attached is a list of violations relevant to this action. Further investigation and discovery may result in shedding light to further violations. Please consider this letter and the attached as the notice required by California Labor Code Section 2699.3.

Pursuant to Labor Code 2699(a), Plaintiffs Victor Corona and Rosa Alcaute hereby apply to recover through civil action on behalf of themselves and other current and former aggrieved employees.

Very truly yours,

LIBERATION LAW GROUP, P.C.

Ernesto Sanchez

cc:

San Francisco Brewing Co. LLC
Attn: Joshua Ibs Leavy
100 Broderick Street, #401
San Francisco, CA 94117

Labor Code 2699 Notice of Violations

On or about June 8, 2018, Victor Corona ("Corona") was hired by San Francisco Brewing Co. LLC ("Defendant") as a line cook and pizza maker. Corona was hired by Defendant as a non-exempt employee. Corona's initial regular rate of pay was \$19.00 per hour.

On or about September 4, 2018, Plaintiff Rosa Alcaute ("Alcaute") was hired by Defendant as a prep cook, salad prep, and dishwasher. Alcaute was hired by Defendant as a non-exempt employee. Alcaute's regular rate of pay was \$17.00 per hour.

Corona and Alcaute shall collectively be referred to as "Plaintiffs."

During the course of their employment, Plaintiffs regularly worked more than six (6) hours per day, five (5) days per week. On several occasions, Plaintiff Corona worked more than eight (8) hours per day.

Plaintiffs' supervisors were Laureano, last name unknown ("Laureano"), Lead Line Cook for Defendant, Luis Gutierrez ("Gutierrez"), Chef for Defendant, Crystal Dent ("Dent"), Manager for Defendant, and Geoffrey E. Perry ("Perry"), General Manager for Defendant.

Plaintiffs were paid by check on a bi-weekly basis.

Plaintiffs tracked their hours worked on Defendant's electronic timekeeping system.

During the course of their employment, Defendant did not pay Plaintiffs, and all current and former aggrieved employees, for all hours worked.

During the course of their employment, Defendant did not pay Plaintiffs, and all current and former aggrieved employees, for off-the-clock hours worked.

During the course of their employment, Defendant did not pay Plaintiffs, and all current and former aggrieved employees, during the times when they were clocked in for meal breaks and were working during that time.

During the course of his employment, Defendant did not pay Corona, and all current and former aggrieved employees, for all overtime hours worked.

Plaintiffs were not compensated between seven and a half (7.5) to eleven (11) minutes of off-the-clock work at the beginning of their scheduled shift. During these minutes of off-the-clock work, Plaintiffs walked into Defendant's premises from the back door, walked to Defendant's dressing room, waited for the dressing room to be vacant, and changed into their work uniforms before clocking in for the start of their shift.

Plaintiffs were not compensated between four and a half (4.5) to six and a half (6.5) minutes of off-the-clock work at the end of their scheduled shift. During these minutes of off-the-clock work, Plaintiffs walked to Defendant's dressing room and changed out of their work uniforms after clocking out for the end of their shift.

Additionally, on or about early 2019, Defendant informed Plaintiffs that they needed to clock out of work no later than the sixth hour of work although Plaintiffs continued working.

On approximately four (4) times per week, Alcuete performed approximately fifteen (15) to twenty (20) minutes of off the clock work after clocking out at the end of her shift in order to finish her pending duties.

On approximately four (4) times per week, Corona performed approximately fifteen (15) to thirty (30) minutes of off the clock work after clocking out at the end of his shift in order to finish his pending duties.

During the course of their employment, Plaintiffs, and all current and former aggrieved employees, were not provided nor authorized to take all uninterrupted thirty (30) meal breaks for every five hours worked that they were entitled to receive.

Plaintiffs were not provided with proper meal breaks for the following reasons:

- On or about early 2019, Defendant had a policy of requiring Plaintiffs to punch in and out of meal breaks while working during that time, with the result that no meal breaks were provided;
- On several occasions, Plaintiffs were provided with less than thirty (30) minute meal breaks; and
- On several occasions, Plaintiffs' meal breaks were interrupted to address work-related matters.

During the course of their employment, Plaintiffs, and all current and former aggrieved employees, were not provided with all meal break premiums that they were entitled to receive.

During the course of their employment, Plaintiffs, and all current and former aggrieved employees, were not provided nor authorized to take all uninterrupted ten (10) minute rest breaks for every four (4) hours worked, or major fraction thereof, that they were entitled to receive.

Plaintiffs were not provided with proper rest breaks for the following reasons:

- Rest breaks were not provided at all;
- 2nd rest breaks were not provided;
- On several occasions, Plaintiffs were provided with less than ten (10) minute rest breaks; and

- On several occasions, Plaintiffs' rest breaks were interrupted to address work-related matters.

During the course of their employment, Plaintiffs, and all current and former aggrieved employees, were not provided with all rest break premiums that they were entitled to receive.

During the course of their employment, Defendant failed to provide Plaintiffs, and all current and former aggrieved employees, with all tips that they were entitled to receive. Defendant promised Plaintiffs with receipt of tips when Defendant catered for private events. Plaintiffs performed work for several catered private events for which Defendant failed to compensate them for tips.

Plaintiffs are also informed and believe that Defendant engaged in tip pooling violations. Plaintiffs complained to Defendant about tip pooling violations and not getting paid for all tips due. Defendant ignored Plaintiffs' complaints.

During the course of their employment, Defendant provided Plaintiffs, and all current and former aggrieved employees, with inaccurate wage statements. The itemized wage statements provided to Plaintiffs did not accurately reflect all of their hours worked, compensation earned, all tips Plaintiffs were entitled to receive, and all break premiums owed.

Defendant willfully failed to pay all wages and premiums due to Plaintiffs, and all current and former aggrieved employees, at the end of their employment, entitling them to waiting time penalties.

Pursuant to Labor Code § 2699, Plaintiffs, on behalf of themselves and all current and former aggrieved employees of Defendant, seek to recover civil penalties against Defendant for Labor Code violations and violations to IWC Wage Order 5 pursuant to, but not limited to:

Defendant violated § 204 by failing to pay Plaintiffs all wages due on the designated days of pay. Defendant failed to pay Plaintiffs for all hours worked in violation of Labor Code §§ 1194 and 1197. Defendant violated section 4 of the Industrial Welfare Commission Wage Order 5 by failing to pay Plaintiffs all hours worked at least at the minimum wage rate.

Violations to Labor Code § 204 – penalties pursuant to §§ 210 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violation to Labor Code § 1197 – penalties pursuant to Labor Code §§ 1197.1, 558, and 2699(f); violations to Wage Order 5 section 4 – penalties pursuant to § 20 of Wage Order 5.

By requiring Plaintiffs to work overtime and not properly compensating them for overtime hours worked, Defendant violated Labor Code §§ 510 and 1194(a), which makes it “unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Defendant violated Labor Code §§ 510 and 1194, and section 3 of

the Industrial Welfare Commission Wage Order 5 by failing to pay Plaintiffs for all overtime hours worked at one and one half times their regular rate of pay.

Violations to Labor Code § 510 – penalties pursuant to Labor Code §§ 558 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violations to Wage Order 5 section 3 – penalties pursuant to § 20 of Wage Order 5.

Defendants violated Labor Code §§ 226.7(a), and section 12 of the Industrial Welfare Commission Wage Order 5, by failing to provide Plaintiffs, and all other aggrieved employees, proper rest breaks and then failing to provide Plaintiffs, and all other aggrieved employees, the required one hour compensation when rest periods were not properly provided.

Violations to Labor Code § 226.7(a) - penalties pursuant to § 2699(f); and Violations to § 12 of IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.

Defendant violated Labor Code §§ 226.7 (a), 512, and section 11 of the Industrial Welfare Commission Wage Order 5, by failing to provide Plaintiffs, and all other aggrieved employees, timely and uninterrupted meal periods and then failing to provide Plaintiffs, and all other aggrieved employees, the required one hour compensation when meal periods were not properly provided.

Violations to Labor Code § 226.7 (a) and 512 - penalties pursuant to § 2699(f); and violations to § 11 of IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.

Defendant violated Labor Code § 226(a) and IWC Order 5 section 7 by failing to provide Plaintiffs, and all other aggrieved employees, with accurate itemized statements (commonly referred to as “paycheck stub”) providing at least the following required information: (1) gross wages earned, (2) total actual hours worked by the employee, (3) net wages earned, and (4) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employees.

Violations to Labor Code § 226(a), and penalty pursuant to Labor Code section 2699(f); violations to IWC Order 5 section 7 – penalties pursuant to § 20 of IWC Order 5.

Defendants violated Labor Code § 353 by failing to keep accurate records of all gratuities received by Plaintiff, and all other aggrieved employees, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise.

Violations to Labor Code § 353 - penalty pursuant to Labor Code section 2699(f).

Defendants violated Labor Code § 351 by engaging in the collection, taking, or receiving of gratuities left for Plaintiff, and all other aggrieved employees.

Violations to Labor Code § 351 - penalty pursuant to Labor Code section 2699(f).

Defendant violated Labor Code §§ 201 through 203 by failing to pay Plaintiffs all wages and compensation owed within 72 hours of their separation date.

Violations to Labor Code §§ 201 through 203 - penalties pursuant to Labor Code section 2699(f).