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Superior Court of California
County of Los Angeles

APR 20 2020

Sherri K. Carter, Executive Officer/Clerk of Court
By [Signature], Deputy
Clerk of Court

Attorneys for Plaintiff STEVEN WINTER,
on behalf of himself and all others similarly situated

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

STEVEN WINTER, individually and on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC., a Delaware
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. **20STCV15177**

PAGA REPRESENTATIVE ACTION

Assigned To:

Dept.:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, STEVEN WINTER, on behalf of himself and in his representative capacity as
2 private attorney general, complains of defendants BUBBA GUMP SHRIMP CO.
3 RESTAURANTS, INC., a Delaware Corporation, and DOES 1-50, inclusive (collectively
4 “Defendants”) as follows:

5 I. INTRODUCTION

6 1. This is a representative action for recovery of penalties under the Private Attorneys General
7 Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved
8 employees” to bring a lawsuit as a representative action on behalf of themselves and all other
9 current and former aggrieved employees, to recover civil penalties and address an employer’s
10 violations of the California Labor Code.

11 2. Plaintiff brings this action pursuant to the PAGA on a representative basis. All current and
12 former hourly, non-exempt employees in Defendants’ California restaurants are aggrieved
13 employees.

14 3. Plaintiff brings this suit on behalf of himself and all other current and former non-exempt
15 employees working for Defendants in their restaurants in California during the relevant time period
16 to recover civil penalties and address the employer’s violations of the California Labor Code (the
17 “Aggrieved Non-Exempt Employees”).

18 4. In addition, Plaintiff seeks to represent a subgroup of employees that received tips or were
19 supposed to receive tips during their employment (the “Tipped Aggrieved Employees”).

20 5. Plaintiff was employed by Defendants as an hourly, non-exempt restaurant employee in
21 the State of California.

22 6. In this case, Defendants violated various provisions of the California Labor Code and
23 relevant IWC Wage Orders. As set forth below, Defendants implemented policies and practices
24 which led to Defendants’ (1) failure to accurately calculate and pay all wages owed including
25 minimum wage, (2) failure to pay overtime; (3) failure to provide lawful meal periods, (4) failure
26 to provide compensation when lawful meal periods were not provided; (5) failure to authorize and
27 permit lawful rest periods; (6) failure to provide compensation when lawful rest periods were not
28 provided; (7) failure to pay reporting time wages; (8) unlawful deductions; (9) failure to timely

1 pay wages owed upon separation from employment; (10) failure to furnish accurate itemized wage
2 statements; (11) failure to reimburse necessary expenses; and (12) unlawful mandatory tip pooling.

3 7. Plaintiff in his representative capacity seeks civil penalties on behalf of himself and other
4 aggrieved employees pursuant to PAGA for Defendants failure to comply with California Labor
5 Code and IWC Wage Order requirements.

6 8. As set forth in greater detail herein, Defendants engaged in conduct and adopted policies
7 that were and continue to be in violation of the California Labor Code and applicable law.
8 Plaintiff, on behalf of herself and all other Aggrieved Non-Exempt Employees, brings this
9 PAGA action and seeks penalties for violations of the California Labor Code, including without
10 limitation sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.7, 351, 510, 512, 558, 1174,
11 1174.5, 1194, 1194.2, 1197, 1198, 2802, 2698 *et. seq.*, applicable IWC California Wage Orders
12 (including Wage Order 5-2001) and California Code of Regulations, Title 8, section 11000 *et*
13 *seq.*

14 9. This action is timely because Plaintiff suffered from a violation or numerous violations of
15 the California Labor Code within one year of the date on which a PAGA notice was sent to the
16 LWDA via online submission. More than 65 days have passed and no response has been
17 received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached hereto
18 as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting Plaintiff
19 to proceed with this action in a representative capacity.

20 **II. JURISDICTION AND VENUE**

21 10. The Superior Court of the State of California has jurisdiction in this matter because
22 Plaintiff is a citizen and resident of the State of California and Defendants are citizens and
23 residents of, and/or regularly conduct business in, California. Further, no federal question is at
24 issue because the claims are based solely on California law.

25 11. Venue is proper in this judicial district and the County of Los Angeles, California
26 because Defendants' maintain offices and facilities and transact business in the County of Los
27 Angeles, and Defendants' illegal policies and practices which are the subject of this action were
28 applied, at least in part, in the County of Los Angeles.

1 partners, agents, or principals and co-conspirators of Defendants and of each other; that
2 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly,
3 aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
4 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
5 of the liability of the Defendants as alleged herein.

6 22. Plaintiff is further informed and believes, and thereon alleges, that at all times material
7 herein, each Defendant was completely dominated and controlled by its co-Defendants and each
8 was the alter ego of the other. Whenever and wherever reference is made in this complaint to
9 any conduct by Defendant or Defendants, such allegations and references shall also be deemed to
10 mean the conduct of each of the Defendants, acting individually, jointly, and severally.
11 Whenever and wherever reference is made to individuals who are not named as Defendants in
12 this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant
13 times acted on behalf of Defendants named in this complaint within the scope of their respective
14 employments.

15 IV. FACTUAL ALLEGATIONS

16 23. During the relevant time frame, Defendants compensated Plaintiff, and the Aggrieved
17 Non-Exempt Employees based upon an hourly wage.

18 24. During the relevant time frame, some Aggrieved Non-Exempt Employees also earned
19 tips, in addition to their hourly wages, during the performance of their job duties. Such
20 aggrieved employees are referred to as "Tipped Aggrieved Employees."

21 25. Plaintiff and the Aggrieved Non-Exempt Employees are and at all times pertinent hereto,
22 have been non-exempt employees within the meaning of the California Labor Code, and the
23 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
24 protections of the IWC Wage Orders and the Labor Code.

25 26. Plaintiff was employed as an hourly non-exempt restaurant employee from April 2017
26 through March 5, 2019.

27 27. Plaintiff provided customer service and restaurant serving functions as a Server/Waiter at
28 Defendants' restaurant location in Santa Monica, California.

1 28. The Aggrieved Non-Exempt Employees worked as employees of Defendants throughout
2 the state of California during the liability period.

3 29. Plaintiff typically worked 5-7 days a week, for 30-50 hours a week.

4 30. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
5 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
6 the requirements of California's wage and employment laws.

7 **Failure to Pay Minimum Wages**

8 31. Labor Code § 1182.12 sets the minimum wage.

9 32. Labor Code § 1194 provides that "Notwithstanding any agreement to work for a lesser
10 wage, any employee receiving less than the legal minimum wage compensation or the legal
11 overtime compensation applicable to the employee is entitled to recover in a civil action the
12 unpaid balance of the full amount of this minimum wage or overtime compensation, including
13 interest thereon, reasonable attorney's fees, and costs of suit."

14 33. Labor Code § 1197 states that "The minimum wage for employees fixed by the
15 commission or by any applicable state or local law, is the minimum wage to be paid to
16 employees, and the payment of a lower wage than the minimum so fixed is unlawful."

17 34. Labor Code § 1198 provides: "The maximum hours of work and the standard conditions
18 of labor fixed by the commission shall be the maximum hours of work and the standard
19 conditions of labor for employees. The employment of any employee for longer hours than those
20 fixed by the order or under conditions of labor prohibited by the order is unlawful."

21 35. The Labor Code and the Wage Order 5-2001 require that employers pay employees at
22 least minimum wage for each hour worked.

23 36. Plaintiff and the Aggrieved Non-Exempt Employees were not exempt from the
24 requirement to be paid minimum wages in accordance with the law.

25 37. Plaintiff alleges that Defendants violated Labor Code sections 1194, 1197, 1198 and the
26 IWC Wage Order 5-2001 by failing to pay all wages owed including minimum wages to
27 Aggrieved Non-Exempt Employees.

28 38. Plaintiff alleges that, during the relevant time, Plaintiff and the Aggrieved Non-Exempt

1 Employees were required to work hours for which they were not compensated at least minimum
2 wage in violation of the law by virtue of Defendants' policies, practices, procedures, labor
3 models, staffing models, and labor budgets.

4 39. In addition, upon information and belief, Defendants often manipulated or changed the
5 time punch data for Plaintiff and the Aggrieved Non-Exempt Employees to make it appear as if
6 compliant meal periods had been taken. Such time during purportedly provided meal periods
7 constitutes hours worked for which Plaintiff and the Aggrieved Non-Exempt Employees should
8 have been paid.

9 40. Defendants knew or should have known that Plaintiff and the Aggrieved Non-Exempt
10 Employees were required to work off-the clock but did not pay Aggrieved Non-Exempt
11 Employees for such hours worked.

12 41. As a result of Defendants' conduct in not paying Plaintiff and the Aggrieved Non-
13 Exempt Employees all wages earned, the Plaintiff and the Aggrieved Non-Exempt Employees
14 have been deprived of minimum wages for off the clock hours for which they were not
15 compensated.

16 **Failure to Pay Overtime**

17 42. The Labor Code and the Wage Order 5-2001 require that employers pay employees at
18 least minimum wage for every hour worked, and overtime for hours worked over eight hours in a
19 day and over forty hours in a week.

20 43. Labor Code §510, 515 requires employers to pay employees one-and-one-half (1-1/2)
21 times the employee's regular rate of pay for all those hours worked in excess of forty (40) hours
22 in one work week and/or in excess of eight (8) hours in one work day, and two (2) times the
23 regular rate of pay for hours worked in excess of twelve (12) hours in a day or more than eight
24 (8) hours on the seventh day in a workweek, unless such employees are exempt from the
25 requirements of the Wage Order.

26 44. Plaintiff, and the Aggrieved Non-Exempt Employees were not exempt from the
27 requirement to be paid overtime wages in accordance with the law.

28 45. Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1197, 1198 and

1 the IWC Wage Order by failing to pay all wages owed including overtime to Aggrieved Non-
2 Exempt Employees.

3 46. Plaintiff alleges that during the relevant time, Plaintiff and the Aggrieved Non-Exempt
4 Employees were required to work hours for which they were not compensated, including
5 overtime, in violation of the law by virtue of Defendants' policies, practices, procedures, labor
6 models, staffing models, and labor budgets.

7 47. At all times relevant, Plaintiff and the Aggrieved Non-Exempt Employees consistently
8 worked hours for which they were not paid because Plaintiff and the Aggrieved Non-Exempt
9 Employees were required to work off the clock, including without limitation during purportedly
10 provided meal periods.

11 48. Upon information and belief, Defendants systematically deducted hours worked from
12 each workday over five hours for purported meal periods even when duty-free time was not in
13 fact provided.

14 49. Plaintiff is informed and believes that Defendants and its managers were aware that
15 Plaintiff and the Aggrieved Non-Exempt Employees were working off the clock and that they
16 should have been paid for this time.

17 50. In addition, upon information and belief, Defendants failed to pay Aggrieved Non-
18 Exempt Employees for overtime hours worked at the proper rate, because Defendants failed to
19 include all applicable forms of compensation in the regular rate.

20 51. As a result of Defendants' conduct in requiring Plaintiff and the Aggrieved Non-Exempt
21 Employees to work hours in excess of eight (8) hours per work day and/or forty (40) in one work
22 week without paying them one-and-one-half (1-1/2) times their regular hour rate (or double-time
23 hours for hours worked in excess of twelve (12) hours per day or for hours over eight on the
24 seventh day), Defendants violated the Labor Code and the Wage Order.

25 **Failure to Provide Timely, Legally Compliant Meal Periods**

26 52. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period
27 of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in
28 which the employee is relieved of all of his or her duties, except that when a work period of not

1 more than six (6) hours will complete the day's work the meal period may be waived by mutual
2 consent of the employer and employee.

3 53. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a
4 work period of more than ten (10) hours without providing a second meal break of not less than
5 thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
6 break may only be waived by mutual consent, and if the employee did not waive his or her first
7 meal period, and the employee's work day will not exceed twelve hours.

8 54. During the liability period, Defendant failed to provide Plaintiff and Aggrieved Non-
9 Exempt Employees with timely and uninterrupted first meal periods of not less than thirty (30)
10 minutes within the first five hours of a shift.

11 55. During the liability period, Defendant also failed to provide Plaintiff and the Aggrieved
12 Non-Exempt Employees with timely and uninterrupted second meal periods of not less than
13 thirty (30) minutes on shifts longer than ten hours.

14 56. Indeed, during the relevant time, as a consequence of Defendant's staffing and
15 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
16 Plaintiff and the Aggrieved Non-Exempt Employees were not provided with legally required
17 uninterrupted meal periods.

18 57. Upon information and belief, Defendants often manipulated or changed the time
19 punch data for Plaintiff and the Aggrieved Non-Exempt Employees to make it appear as if
20 compliant meal periods had been taken.

21 58. In addition, Defendants put the onus on employees to provide their own meal
22 breaks and authorize and permit rest periods by failing to provide or authorize and permit such
23 breaks in the first instance.

24 59. Defendants also maintained a policy which provides that if an employee fails to
25 inform a supervisor of a non-compliant meal or rest period, he or she voluntarily waives that
26 meal or rest break.

27 60. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded
28 or discouraged the taking of lawful meal and rest breaks through its practices, policies, and

1 procedures.

2 61. On information and belief, Plaintiff and Aggrieved Non-Exempt Employees did
3 not waive their rights to meal periods under the law.

4 62. Defendants violated Labor Code § 226.7, 512 and IWC Wage Order 5-2001 by
5 such conduct.

6 63. Pursuant to Labor Code § 226.7, Plaintiff and the Aggrieved Non-Exempt
7 Employees are entitled to recover one (1) hour of premium pay for each day in which a meal
8 period violation occurred.

9 64. Plaintiff and the Aggrieved Non-Exempt Employees were not paid one hour of pay at
10 their regular rate for each day that a first or second meal period was not lawfully provided. This
11 is a further violation of Labor Code § 226.7, 512 and IWC Wage Order 5-2001.

12 **Failure to Authorize and Permit Legally Compliant Rest Breaks**

13 65. This action is brought under Labor Code §226.7 and Section 12(A) of Wage Order 5,
14 which provides that employers shall authorize and permit employees to take a rest period of ten
15 (10) minutes for each four (4) hours, or major fraction thereof, worked.

16 66. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage
17 Order 5, which provides that if an employer fails to authorize and permit a lawful rest period, the
18 employer shall pay the employee one hour of pay for each work day that a rest period was not
19 authorized and permitted.

20 67. Plaintiff and the Aggrieved Non-Exempt Employees were systematically not authorized
21 and permitted to take legally compliant net ten (10) minute rest periods for every four hours
22 worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198,
23 and IWC Wage Order 5.

24 68. Employees were not authorized and permitted to take a net ten minute rest period as
25 required by law, in part because Defendants maintained and enforced scheduling practices,
26 policies and practices, and imposed work demands that frequently required employees to forego
27 their breaks or return before a net ten minutes of rest.

28 69. As set forth above, Defendants put the onus on employees to provide their own meal

breaks and authorize and permit rest periods by failing to provide or authorize and permit such breaks in the first instance.

70. Defendants also maintained a policy which provides that if an employee fails to inform a supervisor of a non-compliant meal or rest period, he or she voluntarily waives that meal or rest break.

71. In addition, upon information and belief, Defendant's policy provided that employees could not leave the premises during rest periods. This exercise of employer control over employees during rest breaks is inconsistent with the mandates of the law.

72. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded or discouraged the taking of lawful meal and rest breaks through its practices, policies, and procedures.

73. Pursuant to Labor Code § 226.7, 1198, and the Wage Order, Plaintiff and the Aggrieved Non-Exempt Employees are entitled to recover one (1) hour of premium pay for each day in which a rest period violation occurred.

74. Despite the above-mentioned rest period violations, Defendant did not compensate Plaintiff, and on information and belief, did not compensate the Aggrieved Non-Exempt Employees one additional hour of pay at their regular rate as required by California law for each day on which rest periods were not lawfully authorized and permitted.

75. As a direct and proximate result of Defendant's conduct as alleged above, Plaintiff and the Aggrieved Non-Exempt Employees have sustained damages in the amount of one hour of wages for each day they were not authorized and permitted to take lawful net ten (10) minute rest periods.

Failure To Pay Reporting Time Wages

76. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum wage as established by the Industrial Welfare Commission.

77. Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours

1 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

2 78. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001.

3 79. In relevant part, Section 5 of the applicable wage order provides:

4 (A) Each workday an employee is required to report for work and does report,
5 but is not put to work or is furnished less than half said employee's usual or
6 scheduled day's work, the employee shall be paid for half the usual or scheduled
7 day's work, but in no event for less than two (2) hours nor more than four (4)
8 hours, at the employee's regular rate of pay, which shall not be less than the
9 minimum wage.

8 80. Defendants failed to pay reporting time wages. In particular, Plaintiff and the Aggrieved
9 Non-Exempt employees were forced to report to work and were furnished with less than half the
10 employee's usual or scheduled day's work.

11 81. In fact, on numerous occasions, Plaintiff and Aggrieved Non-Exempt Employees
12 Aggrieved Non-Exempt Employees reported to work at Defendants' direction, and then were
13 sent home—all without any compensation.

14 82. By the failure to pay hourly wages for reporting time, Defendants willfully violated
15 Labor Code sections 1194, 1197, 1198, and IWC Wage Order 5-2001.

16 **Mandatory Tip Deductions**

17 83. Defendants also maintained a mandatory tip pooling scheme which required
18 Plaintiff and the Tipped Aggrieved Employees to pay a certain percentage of the total guest bill
19 to Defendants, regardless of whether the guest actually left a tip or gratuity for the employee.
20 Thus, in some circumstances, the employee may "owe money" to Defendants and have to pay
21 such sums from other earned wages.

22 84. In relevant part Labor Code section 351 states, "No employer or agent shall
23 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
24 employee by a patron, or deduct any amount from wages due an employee on account of a
25 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against
26 and as a part of the wages due the employee from the employer. Every gratuity is hereby
27 declared to be the sole property of the employee or employees to whom it was paid, given, or left
28 for."

85. There are only two conditions created by Labor Code section 351, "the person must be an employee and the tip must have been 'paid, given or left for' the employee." *Budrow v. Dave & Buster's of California, Inc.* (2009) 171 Cal.App.4th 875, 879

86. In violation of Labor Code section 351, Plaintiff and the Tipped Aggrieved Employees were required to contribute personal wages or otherwise earned wages to the tipping pool when the tip they received did not amount to the percentage they were required to contribute.

87. In addition, Plaintiff alleges upon information and belief that there was not a fair and reasonable distribution of tips from the pool.

Unlawful Deductions

88. Pursuant to Labor Code sections 221-224, it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee without written authorization.

89. As detailed above, Plaintiff and Tipped Aggrieved Employees were required to give a percentage of their expected tips to the tip pool. However, if Plaintiff and/or the Tipped Aggrieved Employees received less than expected or nothing at all, Defendants required Plaintiff or Tipped Aggrieved Employees to contribute to the tip pool with their personal wages. This constitutes an unlawful deduction.

90. As detailed above, Defendants mandated that Plaintiff and the Tipped Aggrieved Employees have wages deducted without written authorization in violation of Labor Code section 224 and 300. Such deductions are unlawful in violation of Labor Code sections 224, 225.5 and 300.

91. As a result of the unlawful acts of Defendants, Plaintiff and Tipped Aggrieved Employees have been deprived of wages in amounts to be determined at trial.

Failure to Timely Pay Wages During Employment

92. In addition, Plaintiff alleges that Defendants violated section 204 of the Labor Code, as Defendant willfully failed to pay on time to Plaintiff and the Aggrieved Non-Exempt Employees the legal wages (including minimum wages, tipped wages, and overtime wages) they

1 earned, and failed to pay one hour wages in lieu of required, but not lawfully provided, meal and
2 rest periods, twice per calendar month as required by law.

3 **Failure to Pay All Wages At the Time of Termination**

4 93. In part as a result of the above specified violations, Defendants have also failed to
5 pay all wages owed at the time of separation as required by Labor Code §§ 201-202.

6 94. Labor Code §203, at all times relevant herein, provided that if an employer willfully fails
7 to pay any wages of an employee who is discharged or quits within the applicable time frame,
8 the wages of such employee shall continue as from the due date thereof at the same rate until
9 paid or until an action therefor is commenced, for not more than 30 days.

10 95. Plaintiff and the Aggrieved Non-Exempt Employees also did not receive waiting
11 time penalties as required by Labor Code § 203.

12 96. All Aggrieved Non-Exempt Employees who were separated from employment are
13 entitled to compensation for all forms of wages earned, including but not limited to unpaid
14 straight time wages, tips, minimum wage, overtime compensation and compensation for non-
15 provided meal and rest periods, but to date have not received such compensation, therefore
16 entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203.

17 **Failure to Provide Accurate Compliant Wage Statements**

18 97. This action is brought under Labor Code §226, which sets for reporting requirements for
19 employers when paying wages, including,

20 “Every employer shall, semimonthly or at the time of each payment of wages,
21 furnish each of his or his employees . . . an itemized statement in writing showing
22 (1) gross wages earned, (2) total hours worked by the employee, except for any
23 employee whose compensation is solely based on a salary and who is exempt from
24 payment of overtime under subdivision (a) of Section 515 or any applicable order
25 of the Industrial Welfare Commission, . . . (8) the name and address of the legal
26 entity that is the employer, and (9) all applicable hourly rates in effect during the
27 pay period and the corresponding number of hours worked at each hourly rate by
28 the employee.”

1 98. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
2 Wage Orders, Defendants did not and still do not furnish the Aggrieved Non-Exempt Employees
3 with an accurate itemized statement in writing accurately reflecting all of the required
4 information. Specifically, Defendants have also omitted accurate itemizations of total hours
5 worked, the name and address of the legal entity that is the employer, and gross and net pay from
6 Plaintiff and Aggrieved Non-Exempt Employees' wage statements. In addition, Defendants have
7 failed to provide accurate itemized wage statements as a consequence of the above-specified
8 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
9 failure to pay meal and rest period premiums as required by law.

10 99. Defendants have failed to record many of the items delineated in applicable
11 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
12 1174, including by virtue of the fact that each wage statement which failed to accurately
13 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
14 meal and rest periods, or which failed to include compensation for all minimum wages earned or
15 overtime hours worked, was an inaccurate wage statement.

16 100. Plaintiff is informed and believes and based thereon alleges that Defendants
17 knowingly and intentionally failed to provide wage statements that complied with Labor Code
18 §226 to Plaintiff and the aggrieved employees by, inter alia, failing to show all hours worked and
19 all wages earned by Plaintiff and the aggrieved employees.

20 101. Defendants have made it difficult to account with precision for the unlawfully
21 withheld wages owed to Plaintiffs and Aggrieved Non-Exempt Employees during the liability
22 period and failed to implement and preserve a lawful record-keeping method to record all non-
23 provided meal and rest periods owed to employees, as required for non-exempt employees by
24 California Labor Code section 226 and applicable California Wage Orders.

25 **Failure to Keep Accurate Timekeeping Records**

26 102. IWC Wage Order 5-2001 requires in pertinent part: Every employer shall keep
27 accurate information with respect to each employee including the following: (3) Time records
28 showing when the employee begins and ends each work period. Meal periods, split shift

1 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
2 payroll period and applicable rates of pay....”

3 103. Labor Code section 1174 of the California also requires Defendants to maintain
4 and preserve, in a centralized location, among other items, records showing the names and
5 addresses of all employees employed and payroll records showing the hours worked daily by,
6 and the wages paid to, its employees. On information and belief and based thereon, Defendants
7 have knowingly and intentionally failed to comply with Labor Code section 1174, including by
8 implementing the policies and procedures and committing the violations alleged in the preceding
9 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
10 unlawful pursuant to Labor Code section 1175.

11 104. Defendants failed to keep accurate timekeeping records by failing to properly
12 record the beginning and end of each work period, and failing to accurately record meal periods
13 and the other items set forth herein.

14 **Failure to Reimburse Expenses**

15 105. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
16 Non-Exempt Employees for necessary expenditures incurred in direct consequence of the
17 discharge of his or her duties.

18 106. Plaintiff, and on information and belief members of the Aggrieved Non-Exempt
19 Employees, were required to incur expenses in the performance of their assigned job duties. For
20 example, Plaintiff and the Aggrieved Non-Exempt Employees were required to incur numerous
21 out of pocket expenses, including without limitation, for cellular phone usage and for a phone
22 application, in direct consequence of the discharge of their duties.

23 107. Upon information and belief, the Defendants did not reimburse Plaintiff or the
24 Aggrieved Non-Exempt Employees for such expenses. This constitutes a violation of Labor
25 Code section 2802.

1 **V. CAUSES OF ACTION**

2 **First Cause of Action**

3 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR**
4 **CODE SECTION 2698 ET SEQ.**

5 108. Plaintiff incorporates by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

7 109. On February 13, 2020, Plaintiff gave written notice by online submission to the
8 LWDA and by certified mail to Defendant of Defendants' violations of numerous provisions of
9 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
10 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached
11 hereto as **Exhibit A**.

12 110. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(a), as
13 he was employed by Defendants during the statutory period and suffered on or more of the Labor
14 Code violations set forth herein. He seeks to recover on behalf of himself and all other current
15 and former other aggrieved employees (hourly, non-exempt restaurant employees in California)
16 of Defendants the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

17 111. 65 days have passed and no response has been received from the LWDA.
18 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

19 112. Plaintiff has exhausted all administrative procedures required of them under
20 Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing
21 forward this cause of action.

22 113. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
23 for which Defendants are liable due to numerous Labor Code violations as set forth in this
24 Complaint.

25 114. Plaintiff seeks to recover the PAGA civil penalties through a representative action
26 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
27 Cal.4th 969. Class certification of the PAGA claims is not required.

28 115. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover

1 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
2 violations as set forth in this Complaint.

3 116. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seek
4 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 5 a. Defendants' failure to comply with the requirement of Labor Code §1182.12, 1194,
6 1197, 1198, and Wage Order 5-2001 to pay at least minimum wage for every hour
7 worked;
- 8 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
9 1197, 1198, and Wage Order 5-2001 to pay all wages earned including overtime
10 wages;
- 11 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
12 wages after demand was made;
- 13 d. Defendants' failure to comply with the requirement of Labor Code §§204 and 210
14 to pay, without condition and within the time set by the applicable article, all
15 wages, or parts thereof;
- 16 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
17 wages due;
- 18 f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
19 to pay wages due to former employees;
- 20 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
21 waiting time penalties to former employees;
- 22 h. Defendants' failure to pay wages for reporting time in violation of Labor Code
23 sections 1194, 1197, 1198, and IWC Wage Order 5-2001;
- 24 i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
25 and IWC Wage Order 5-2001 to authorize and permit ten (10) minute rest breaks;
- 26 j. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
27 and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily
28 required rest break that was not authorized and permitted;

- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Order 5-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;
- l. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each lawful meal break that was not provided;
- m. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- n. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- o. Defendants' failure to comply with the requirements of Labor Code §221, 223, and 300 by making unlawful deductions from earned wages;
- p. Defendants' failure to comply with the requirements of Labor Code § 351 through its mandatory tip pooling policies;
- q. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- r. Defendants' failure to reimburse necessary expenses in violation of Labor Code § 2802.

117. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.
- b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one

1 thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay
2 periods.

3 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on behalf
4 of an employer who violates, or causes to be violated, a section of this chapter or
5 any provision regulating hours and days of work in any order of the Industrial
6 Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a
7 civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50)
8 for initial violations for each underpaid employee for each pay period for which the
9 employee was underpaid and one hundred dollars (\$100) for each subsequent
10 violation for each underpaid employee for each pay period for which the employee
11 was underpaid.

12 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
13 Defendants are subject to a civil penalty of five hundred dollars (\$500).

14 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to
15 any employee a wage less than the minimum fixed by an order of the commission,
16 shall be subject to a civil penalty as follows: for any initial violation that is
17 intentionally committed, one hundred dollars (\$100) for each underpaid employee
18 for each pay period for which the employee is underpaid; and for each subsequent
19 violation of the same offense, two hundred fifty dollars (\$250) for each underpaid
20 employee for each pay period for which the employee is underpaid regardless of
21 whether the initial violation was intentionally committed.

22 118. Further, as a result of the acts alleged hereinabove, Plaintiff seek penalties under
23 Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of
24 the California Labor Code and IWC Wage Orders.

25 119. Under Labor Code §2699, Plaintiff and Aggrieved Non-Exempt Employees are
26 entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-
27 mentioned provisions of the California Labor Code.

28 120. Under Labor Code §2699, Plaintiff and Aggrieved Non-Exempt Employees

1 should be awarded twenty-five percent (25%) of all penalties due under California law, interest,
2 attorneys' fees and costs.

3 121. Under Labor Code §2699, the State of California should be awarded seventy-five
4 percent (75%) of the penalties due under California law.

5 **VI. PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 7 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the
8 violations specified above;
- 9 2. For penalties under Labor Code sections 204, 210, 226, 226.3, 558, 1174.5, 1197.1,
10 and 2699(a) and (f);
- 11 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California
12 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
13 judgment interest;
- 14 4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226,
15 218.5, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable
16 provisions providing for attorneys' fees and costs; and
- 17 5. For such other and further relief as the Court deems proper.

18
19 Respectfully submitted,

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21 **Dated:** April 20, 2020

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23 

24 JAMES HAWKINS, APLC

James R. Hawkins, Esq.

Christina M. Lucio, Esq.

25
26 Attorneys for Plaintiff STEVEN WINTER, on behalf of
27 himself and all others similarly situated
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