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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 16 2020

BY Mayela Martinez
MAYELA MARTINEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Tiffany Niz, an individual, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiff,

v.

Southern Glazer's Wine and Spirits, LLC, a
Delaware Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **CIV DS 2008028**

CLASS ACTION

COMPLAINT

1. Failure to Pay Straight-Time and Overtime Wages
2. Failure to Provide Required Meal Breaks
3. Failure to Authorize and Permit Required Paid Rest Periods
4. Failure to Provide Accurate Itemized Wage Statements
5. Failure to Pay All Wages Owed Upon Separation
6. Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff Tiffany Niz (hereinafter “Plaintiff” or “Niz”), an individual, on behalf of herself
2 and all other similarly situated current and former sales merchandisers, alleges on information and
3 belief, except for her own acts and experiences, which are based on personal knowledge, the
4 following:

5 **INTRODUCTION**

6 1. This is a putative class action brought against Defendant Southern Glazer’s Wine
7 and Spirits, LLC (hereinafter “Defendant” or “SGWS”) for (i) failing to pay straight-time wages
8 and overtime wages at the lawful regular rate of pay for all work performed; (ii) failing to provide
9 compliant duty-free meal breaks; (iii) failing to provide compliant duty-free rest periods; (iv)
10 failing to pay all owed wages each and every pay period; (v) failing to provide accurate, compliant,
11 itemized wage statements; (vi) failing to pay all wages owed upon separation of employment, as
12 mandated under the California Labor Code; and (vii) violation of California’s Unfair Competition
13 Law (“UCL”).

14 2. Plaintiff is a Member of and the named representative for the Class, the Separated
15 Employee Subclass, and the Wage Statement Subclass, as defined in Paragraphs 15-17 below. The
16 term “Class” includes Plaintiff and all other persons who are members of the “Class,” and/or the
17 “Separated Employee Subclass,” and/or the “Wage Statement Subclass,” as herein defined.

18 3. On behalf of herself and other Members of the Class and Subclasses, Plaintiff seeks
19 1) all straight-time and overtime wages owed, under Labor Code §§ 510, 1194 and 1197; 2) an
20 additional hour of premium pay owed under Labor Code § 226.7 and the applicable I.W.C. Wage
21 Order for each day Defendant(s) failed to provide all required, compliant meal breaks; 3) an
22 additional hour of premium pay owed under Labor Code § 226.7 and the applicable I.W.C. Wage
23 Order for each day Defendant(s) failed to authorize and permit all required, compliant, paid rest
24 periods; 4) unpaid wages, due every pay period, under Labor Code § 204; 5) unpaid wages, due at
25 the time of resignation or termination under Labor Code §§ 201 and/or 202; 6) continuation wages
26 under Labor Code § 203; 7) penalties for inaccurate/non-compliant itemized wage statements,
27 under Labor Code § 226(e); 8) restitution under California Business & Professions Code (“Cal.
28 Bus. & Prof. Code”) § 17203; and, 9) injunctive relief under Labor Code § 226(h) and Cal. Bus. &

1 Prof. Code § 17200.

2 **JURISDICTION AND VENUE**

3 4. This Court has jurisdiction over this Action pursuant to California Code of Civil
4 Procedure (“Cal. Code of Civ. Proc.”) § 410.10 and Cal. Bus. & Prof. Code § 17203. This action is
5 brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendants,
6 pursuant to Cal. Code of Civ. Proc. § 382.

7 5. Venue is proper in this Court, pursuant to Cal. Code of Civ. Proc. §§ 395 and 395.5,
8 because Plaintiff performed work on behalf of Defendant in the County of San Bernardino, and
9 Defendant committed the wrongful conduct herein alleged in the County of San Bernardino against
10 Plaintiff and Members of the Class.

11 **THE PARTIES**

12 **A. Plaintiff and the Class**

13 6. Plaintiff Tiffany Niz was employed by Defendant SGWS in the State of California
14 as an hourly, non-exempt “sales merchandiser” from approximately April 8, 2019 through March
15 12, 2020. Plaintiff drove to supermarkets (typically Albertsons and Vons locations) where she
16 assisted with loads, orders, and taking pictures of orders and putting together displays for purposes
17 of selling and merchandising alcohol that was distributed by SGWS. Plaintiff typically visited
18 approximately 6-8 stores per day, spending approximately 30-60 minutes in a small store versus
19 approximately 1 to 3.5 hours in a larger store. Plaintiff earned \$15.50 per regular straight-time
20 hour during her employment with Defendants. Plaintiff also earned certain monetary non-
21 discretionary bonuses during her employment, based upon certain pre-determined sales goals, as
22 well as monetary incentives for selling certain pre-determined brands of alcohol.

23 7. Plaintiff and other hourly, non-exempt sales merchandisers who worked for SGWS
24 in California were required to participate in conference calls after their work shift had concluded
25 without being paid for this work time. Also, on certain occasions, Plaintiff was required to pick up
26 supplies from a warehouse in order to build displays in stores the following work day, but the time
27 spent by Plaintiff retrieving the work supplies was not paid and occurred off-the-clock. Finally,
28 Plaintiff earned various monetary bonuses and incentives through her employment, however,

1 Defendants failed to incorporate these non-discretionary bonus/incentive amounts into the regular
2 rate of pay for purposes of calculating the overtime rate of pay correctly under California law.

3 8. Plaintiff was not consistently provided with an opportunity to take all required duty-
4 free 30-minute meal breaks, or authorized and permitted to take paid duty-free 10-minute rest
5 periods, as mandated under California law. Defendants advised employees to record their meal
6 breaks of exactly 30 minutes even if they were still working in the store at that time and that they
7 could then take their meal break at a later time (*e.g.* after finishing at that store location). This has
8 resulted in meal break records not being accurately maintained by Defendants. Additionally,
9 Defendants advised employees that rest breaks occurred when they drove to their next store
10 location and that listening to the radio and relaxing while driving between store locations was
11 considered to be a rest break, thereby resulting in Plaintiff never regularly being authorized or
12 permitted to take **compliant duty-free** 10-minute rest periods.

13 9. The Members of the Class are similarly situated persons who are presently
14 employed or were formerly employed by Defendants in California as hourly, non-exempt sales
15 merchandisers who: 1) were not paid straight-time and overtime wages at the lawful rate of pay for
16 all work time; 2) were not provided with uninterrupted, compliant, duty-free 30-minute meal
17 breaks; 3) were not paid all wages due each and every pay period; 4) were not authorized and
18 permitted to take compliant, paid, duty-free 10-minute rest periods; 5) were not provided with all
19 earned wages upon their separation of employment; and/or, 6) were not provided accurate itemized
20 wage statements.

21 10. The true names and capacities, whether individual, corporate, associate or otherwise
22 of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown to Plaintiff,
23 who therefore sues these Defendants by such fictitious names, pursuant to Cal. Civ. Proc. Code §
24 474. Plaintiff is informed and believes, and based thereon, alleges that each of the Defendants
25 designated herein is legally responsible in some manner for the unlawful acts referred to herein. To
26 the extent required, Plaintiff will seek leave of Court to amend this Complaint to reflect the true
27 names and capacities of these Defendants, when they have been ascertained and become known.

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1 11. The agents, servants and/or employees of Defendants and each of them, acting on
2 behalf of the Defendants, acted within the course and scope of his, her or its authority as the agent,
3 servant and/or employee of the Defendants, and personally participated in the conduct alleged
4 herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the
5 acts of each Defendant are legally attributable to the other Defendants and all Defendants are
6 jointly and severally liable to Plaintiff and the other non-exempt hourly employees, for the loss
7 sustained as a proximate result of the conduct of the Defendants' agents, servants and/or
8 employees.

9 **B. Defendants**

10 12. Defendant Southern Glazer's Wine and Spirits, LLC is an entity created under the
11 laws of the State of Delaware. At all relevant times mentioned herein, Defendant conducted
12 substantial business in the State of California, County of San Bernardino. According to the SGWS
13 web site (www.southernglazers.com/about-us/) the company employs 20,000 team members and
14 distributes more than 150 million cases of wine and spirits annually across 44 U.S. markets, the
15 District of Columbia, Canada, and the Caribbean. Defendant was the employer of Plaintiff during
16 her employment.

17 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of
18 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50,
19 but is informed and believes and thereon alleges that said Defendants are legally responsible for the
20 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
21 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants
22 when ascertained.

23 14. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
24 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendants.

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CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action on behalf of herself and all other similarly situated persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class composed of defined as follows:

All of Defendants’ non-exempt, hourly sales merchandisers working in the State of California at any time since March 16, 2016 through the date as determined by the Court (“Class Period”) (“Class Members”).

16. Plaintiff also seeks to bring this action on behalf of herself and all other similarly situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

All Class Members whose employment ended at any time since March 16, 2017 (“Separated Subclass Members”).

17. Plaintiff also seeks to bring this action on behalf of herself and all other similarly situated persons in a Subclass of the Plaintiff Class, which is composed of and defined as follows:

All Class Members employed at any time since March 16, 2019 (“Wage Statement Subclass Members”).

18. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among many persons who comprise a readily ascertainable class.

- a. The Class Members are so numerous that individual joinder of all of them as plaintiffs is impractical. Although the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are not less than 100 Class Members.
- b. The identity of Class Members can readily be determined from Defendants’ records. Defendants’ records include the name and address of every person who performed work for them during the Class Period.
- c. Common questions of law and fact exist as to Class Members and predominate over any questions that may affect only individual Class Members. These common questions include, but are not limited to:

- (1) Did Defendants, in violation of Labor Code §§ 510, 1194, and 1197, fail to pay Plaintiff and Class Members for all straight-time and overtime wages at the lawful rate of pay owed to them?
- (2) Did Defendants violate Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order by failing to provide compliant duty-free meal breaks as alleged herein?
- (3) Did Defendants violate Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order by failing to authorize and permit compliant duty-free paid rest periods as alleged herein?
- (4) Did Defendants fail to provide Wage Statement Subclass Members with accurate, compliant, itemized wage statements?
- (5) Are Defendants liable for civil penalties under Labor Code § 226?
- (6) Did Defendants, in violation of Labor Code § 201 or § 202, fail to pay timely all wages owed to Separated Subclass Members upon separation?
- (7) Did Defendants act willfully when they failed to pay timely all wages owed to Separated Subclass Members upon separation?
- (8) Are Defendants liable for penalty wages under Labor Code § 203?
- (9) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by their unlawful practices, as alleged herein?
- (10) Did Defendants violate the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, by failing to pay Plaintiff and Class Members all wages earned each pay period, in violation of Labor Code § 204, as alleged herein?
- (11) Are Defendants liable for restitution under Cal. Bus. & Prof. Code § 17203?
- (12) Are Defendants liable for pre-judgment interest?
- (13) Are Defendants liable for attorney's fees and costs?

d. Plaintiff is a Member of the Class and the Subclasses, and her claims are typical of the claims of the other Class Members and Subclass Members. Plaintiff is informed and believes and thereon alleges that Defendants maintain policies or practices of: 1)

1 failing to pay straight-time and overtime wages at the lawful rate of pay for all hours
2 actually worked; 2) failing to provide compliant meal breaks; 3) failing to authorize
3 and permit compliant properly paid rest periods; 4) failing to pay employees for all
4 wages earned during each pay period; 5) failing to pay employees all earned wages
5 due upon separation of employment; and/or 6) failing to provide employees with
6 accurate, compliant itemized wage statements.

7 e. Plaintiff will adequately and fairly protect the interests of the Class Members and
8 Subclass Members. Plaintiff has no interest adverse to the interests of absent Class
9 Members and Subclass Members. Plaintiff is represented by legal counsel who has
10 substantial class action experience in civil litigation and employment law.

11 19. A class action is superior to other available means for fair and efficient adjudication
12 of the claims of the Class and would be beneficial for the parties and the court. Class action
13 treatment will allow a large number of similarly situated persons to prosecute their common claims
14 in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and
15 expense that numerous individual actions would require. The monetary amounts due to many
16 individual Class Members are likely to be relatively small, and the burden and expense of
17 individual litigation would make it difficult or impossible for individual members of the Class to
18 seek and obtain relief. A class action will serve an important public interest by permitting such
19 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
20 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

21 **FIRST CAUSE OF ACTION**

22 **Failure to Pay Straight-Time and Overtime Wages**
(By Plaintiff and the Class Members against all Defendants)

23 20. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 21. At all relevant times, Plaintiff and the Class Members were and/or are employees of
25 Defendants covered by Labor Code §§ 510, 1194, and 1197 and the applicable I.W.C. Wage Order.

26 22. By their failure to pay straight-time wages and overtime wages at the lawful rate of
27 pay for all time worked, Defendants willfully breached their agreement to pay wages, in violation
28 of Labor Code §§ 510, 1194 and 1197 and the applicable I.W.C. Wage Order.

23. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, Defendants maintained and continue to maintain a policy or practice of requiring Class Members to participate in telephonic conference calls and to retrieve supplies for displays without paying for this work time or counting this time as hours worked, thereby failing to compensate employees properly for all the time they actually worked and were under the employer's control. Defendants maintained and continue to maintain a policy or practice of paying Class Members monetary bonuses and/or incentives without properly factoring the additional non-discretionary income into the regular rate of pay calculation when paying overtime wages.

24. As a result of Defendants' unlawful and willful conduct, employees have suffered damages in an amount, subject to proof, to the extent they were not paid all straight-time and overtime wages for all hours actually worked and owed to them under Labor Code §§ 510, 1194 and 1197, and the applicable I.W.C. Wage Order.

25. Pursuant to Labor Code §§ 1194, 1194.2 and 1194.3, Plaintiff and the Class Members are entitled to recover the full amount of unpaid wages, liquidated damages, pre-judgment interest, reasonable attorney's fees and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Required Meal Breaks

(By Plaintiff and the Class Members against all Defendants)

26. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

27. At all relevant times, Plaintiff and the Class Members were and/or are employees of Defendants, covered by Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order.

28. Pursuant to Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order, Plaintiff and the Class Members are entitled to a meal break of at least thirty (30) minutes for each workday that they worked more than five (5) hours, and a second meal period of at least thirty (30) minutes for each workday they worked more than ten (10) hours, and one additional hour of pay for every day that all required, compliant meal breaks are not provided.

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1 29. Defendants have failed to provide Plaintiff and the Class Members with compliant
2 meal breaks in accordance with Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage
3 Order. As a result of Defendants' instructions to remain in the store location and to clock-out for
4 exactly 30-minutes within the first 5 hours of a shift for purposes of showing compliance with
5 California's meal break laws and then to take their meal break after departing the store location,
6 Plaintiff and the Class Members were not provided with compliant duty-free meal breaks by
7 Defendants, as mandated under the Labor Code. Further, on certain occasions when Plaintiff
8 clocked-in from a meal break after more than 30-minutes, she was required to contact a manager
9 who would then alter the time records. As a result, in accordance with Defendants' strict corporate
10 policy and practice, Plaintiff and the Class Members failed to receive compliant meal breaks in
11 accordance with California law.

12 30. Defendants failed to provide Plaintiff and the Class Members the additional hour of
13 pay required by Labor Code § 226.7 and the applicable I.W.C. Wage Order. Plaintiff is informed
14 and believes and thereon alleges that at all relevant times within the applicable limitations period,
15 Defendants maintained and continue to maintain a policy or practice of not paying additional pay at
16 the lawful rate of pay to employees for the failure to provide compliant meal breaks.

17 31. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
18 suffered damages in an amount, subject to proof, to the extent they were not paid additional wages
19 at the lawful rate of pay owed for the failure to provide compliant meal breaks.

20 32. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to
21 recover the full amount of their unpaid additional wages for unprovided meal breaks. Pursuant to
22 Labor Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable
23 attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code §3287(a), Plaintiff
24 and the Class Members are entitled to recover prejudgment interest on the additional wages owed
25 for missed meal breaks at the lawful rate of pay.

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1 **THIRD CAUSE OF ACTION**

2 **Failure to Authorize and Permit Required Paid Rest Periods**
3 (By Plaintiff and the Class Members against all Defendants)

4 33. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

5 34. At all relevant times, Plaintiff and the Class Members were and/or are employees of
6 Defendants covered by Labor Code §§ 226.7 and 512, and the applicable I.W.C. Wage Order.

7 35. Pursuant to Labor Code §§ 226.7 and 512 and the applicable I.W.C. Wage Order,
8 Plaintiff and the Class Members are entitled to properly paid rest periods of at least ten (10)
9 minutes for each four (4) hour period of work or major fraction thereof and one (1) hour of
10 additional pay for every day that each and every required compliant paid rest period was not
11 authorized and permitted. Further, Plaintiff and the Class Members have been denied their first rest
12 period of at least ten (10) minutes for some shifts worked of at least two and a half (2.5) to four (4)
13 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between
14 six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for
15 some shifts worked of ten (10) hours or more.

16 36. Defendants have failed to provide Plaintiff and the Class Members the additional
17 hour of pay required under Labor Code §§ 226.7 and 512 and the applicable I.W.C. Wage Order.
18 Plaintiff is informed and believes and thereon alleges that at times during the applicable limitations
19 period, Defendants maintained and continue to maintain a policy or practice of requiring Plaintiff
20 and Class Members to remain “on-duty” and performing work duties during their supposed “rest
21 periods,” due to Defendants’ requirement that Class Members drive to store locations and
22 considering that time to be a ‘duty-free rest period,’ when in fact it is not as, Class Members are
23 required to drive for purposes of their employment. Defendants failed to provide and continue to
24 fail to properly pay Plaintiff and Class Members at the regular rate of pay for all rest periods, as
25 required by law.

26 37. As a result of Defendants’ unlawful conduct, Plaintiff and the Class Members have
27 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
28 owed for missed rest periods at the lawful rate of pay.

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38. Pursuant to Labor Code § 218, Plaintiff and the Class Members are entitled to recover the full amount of their unpaid additional wages for missed rest periods. Pursuant to Labor Code § 218.5, Plaintiff and the Class Members are entitled to recover their reasonable attorney's fees and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the Class Members are entitled to recover prejudgment interest on the additional pay owed for missed rest periods.

FOURTH CAUSE OF ACTION

Failure to Provide Accurate Itemized Wage Statements

(By Plaintiff and the Wage Statement Subclass Members against all Defendants)

39. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

40. At all relevant times, Plaintiff and the Wage Statement Subclass Members were and/or are employees of Defendants covered by Labor Code § 226.

41. Pursuant to Labor Code § 226(a), Plaintiff and the Wage Statement Subclass Members are entitled to receive, semi-monthly or at the time of each payment of wages, an accurate, compliant itemized statement showing gross wages earned; net wages earned; all applicable hourly rates in effect during the pay period; and the corresponding number of hours worked at each hourly rate by the employee.

42. Defendants have failed to provide Plaintiff and the Wage Statement Subclass Members accurate, compliant itemized wage statements in accordance with Labor Code §§ 226(a) and 226.2. Plaintiff is informed and believes and thereon alleges that at all relevant times since one (1) year preceding the filing of the Complaint in this action (the “Penalty Period”), Defendants maintained a policy or practice of failing to pay straight-time and overtime wages for all time actually worked, failing to pay overtime wages at the lawful rate of pay, failing to accurately record all hours actually worked, failing to pay meal break premium payments, failing to pay rest period premium payments, and failing to itemize the applicable rates of compensation. Defendants’ practice resulted and continues to result in the issuance of non-compliant ‘wage statements’ to Class Members that do not show the correct amount of gross wages earned, the correct amount of net wages earned, the correct number of hours worked, the correct hourly rates of pay in effect for each hour worked, and the correct deductions made thereto for taxing authority purposes.

1 43. Defendants' failure to provide Plaintiff and the Wage Statement Subclass Members
2 with accurate itemized wage statements was and is knowing and intentional. Defendants have had
3 the ability to provide Plaintiff and Wage Statement Subclass Members with accurate wage
4 statements, but intentionally provided 'wage statements' that Defendants knew were not accurate or
5 compliant.

6 44. As a result of Defendants' conduct, Plaintiff and the Wage Statement Subclass
7 Members have suffered injury. The absence of accurate and complete information on their wage
8 statements has prevented timely challenges to Defendants' unlawful pay practices, has and will
9 require discovery and mathematical computations to determine the amount of wages owed and
10 number of hours actually worked, caused difficulty and expense in attempting to reconstruct time
11 and pay records, and led to the submission of inaccurate information about wages and deductions to
12 state and federal government agencies.

13 45. Pursuant to Labor Code § 226(e), Plaintiff and the Wage Statement Subclass
14 Members are entitled to recover fifty dollars (\$50) for the initial pay period during the Penalty
15 Period in which a violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each
16 violation of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of
17 four thousand dollars (\$4,000) per employee.

18 46. Pursuant to Labor Code § 226(h), Plaintiff and the Wage Statement Subclass
19 Members are entitled to bring an action for injunctive relief to ensure Defendants' compliance with
20 Labor Code § 226(a). Injunctive relief is warranted because Defendants continue to provide
21 currently employed Wage Statement Subclass Members with inaccurate, deficient, non-compliant
22 'wage statements' in violation of Labor Code § 226(a) and currently employed Wage Statement
23 Subclass Members have no adequate legal remedy for the continuing injuries that will be suffered
24 as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available
25 for ensuring Defendants' compliance with Labor Code § 226(a).

26 47. Pursuant to Labor Code §§ 226(e) and 226(h), Plaintiff and the Wage Statement
27 Subclass Members are entitled to recover the full amount of penalties due under Labor Code
28 §226(e), reasonable attorney's fees and costs of suit.

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Pay All Wages Owed Upon Separation**

(By Plaintiff and the Separated Subclass Members against all Defendants)

3 48. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

4 49. At all relevant times, Plaintiff and the Separated Subclass Members, were
5 employees of Defendants covered by Labor Code §§ 201 and/or 202.

6 50. Pursuant to Labor Code §§ 201 and 202, Plaintiff and the Separated Subclass
7 Members were entitled upon separation to timely payment of all wages earned and unpaid prior to
8 separation. Discharged employees were entitled to payment of all wages earned and unpaid prior
9 to discharge immediately upon termination. Employees who resigned were entitled to payment of
10 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
11 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
12 unpaid prior to resignation at the time of resignation.

13 51. Defendants have failed to pay Plaintiff and the Separated Subclass Members all
14 wages earned and unpaid prior to separation, in accordance with Labor Code §§ 201 and/or 202.
15 Plaintiff is informed and believes and thereon alleges that during the three (3) year limitations
16 period applicable to this cause of action, Defendants maintained and continue to maintain a policy
17 or practice of failing to pay all straight-time and overtime wages at the lawful rate of pay for all
18 time actually worked, all meal break premium payments, and all rest period premium payments
19 owed at the time of separation from employment.

20 52. Defendants' failure to pay Plaintiff and the Separated Subclass Members all wages
21 earned prior to separation in accordance with Labor Code § 201 and/or § 202 was and is willful.
22 Defendants have had the ability to pay all wages earned by employees – including but not limited
23 to all straight-time and overtime wages at the lawful rate of pay, but intentionally have adopted
24 policies or practices incompatible with the requirements of Labor Code §§ 510, 1194, and 1197,
25 and the applicable I.W.C. Wage Order. Defendants have had the ability to pay all meal break and
26 rest period premium payments earned by employees but intentionally adopted policies or practices
27 incompatible with the requirements of Labor Code §§ 226.7 and 512, and the applicable I.W.C.
28 Wage Order. When Defendants failed to pay upon separation all wages earned prior to separation,

1 Defendants knew what they were doing and intended to do what they did.

2 53. Pursuant to Labor Code § 201 or § 202, Plaintiff and the Separated Subclass
3 Members are entitled to all wages earned prior to separation that Defendants did not pay them.

4 54. Pursuant to Labor Code § 203, Plaintiff and the Separated Subclass Members are
5 entitled to penalty wages, from the day their earned and unpaid wages were due upon separation
6 until paid, up to a maximum of 30 days.

7 55. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members
8 have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
9 earned prior to separation in violation of Labor Code § 201 or § 202.

10 56. As a result of Defendants' conduct, Plaintiff and the Separated Subclass Members
11 have suffered damages in an amount, subject to proof, to the extent they were not paid all penalty
12 wages owed to them in violation of Labor Code § 203.

13 57. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the Separated Subclass
14 Members are entitled to recover the full amount of their unpaid wages, unpaid penalty wages, and
15 reasonable attorney's fees and costs of suit. Plaintiff and the Separated Subclass Members are
16 entitled to recover pre-judgment interest on all due and unpaid wages and penalty wages under
17 Labor Code § 218.6 and/or Civil Code § 3287(a).

18
19 **SIXTH CAUSE OF ACTION**
20 **Violation of California's Unfair Competition Law ("UCL")**
21 **[Cal. Bus. & Prof. Code § 17200, *et seq.*]**
22 **(By Plaintiff and the Class Members against all Defendants)**

23 58. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

24 59. Plaintiff brings this claim on behalf of herself and all others similarly situated in his
25 representative capacity against Defendants and Does 1 through 50, for their unlawful business acts
26 and/or practices pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.* (the "UCL"), which prohibits
27 all unlawful business acts and/or practices.

28 60. Defendants are each a "person," as that term is defined under Cal. Bus. & Prof.
Code § 17021.

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1 61. The UCL defines unfair competition as any unlawful, unfair, or fraudulent business
2 act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with
3 respect to unfair competition as follows:

4 Any person who engages, has engaged, or proposes to engage in
5 unfair competition may be enjoined in any court of competent
6 jurisdiction. The court may make such orders or judgments,
7 including the appointment of a receiver, as may be necessary to
8 prevent the use or employment by any person of any practice which
constitutes unfair competition, as defined in this chapter, or as may
be necessary to restore to any person in interest any money or
property, real or personal, which may have been acquired by means
of such unfair competition.

9 Cal. Bus. & Prof. Code § 17203.

10 62. By the conduct alleged herein, Defendants have engaged and continue to engage in
11 business practices that violate California law, including but not limited to, the applicable I.W.C.
12 Wage Order(s), the California Code of Regulations, and the California Labor Code, including §§
13 201-204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1198 thereof, for which this Court should
14 issue declaratory and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be
15 necessary to prevent and remedy the conduct held to constitute unfair competition, including
16 restitution of wages and premium pay wrongfully withheld.

17 63. By the conduct alleged herein, Defendants' practices were and are unlawful and
18 unfair in that these practices have violated public policy, are immoral, unethical, oppressive,
19 unscrupulous or substantially injurious to employees, and are without valid justification or utility,
20 for which this Court should issue equitable and injunctive relief pursuant to Cal. Bus. & Prof. Code
21 § 17203, including restitution of wages and premium pay wrongfully withheld.

22 64. By the conduct alleged herein, Defendants' practices were and are deceptive and
23 fraudulent, in that Defendants' uniform policy and practices have failed to pay Plaintiff and the
24 Class Members straight-time and overtime wages at the lawful rate of pay for all time actually
25 worked, have failed to provide lawful meal breaks and to authorize and permit compliant rest
26 periods, have failed to pay wages earned each and every pay period, have failed to provide accurate
27 itemized wage statements, and have failed to pay all wages owed upon separation of employment,
28 as alleged herein, pursuant to the applicable Cal. Lab. Code, and I.W.C. requirements in violation

1 of Cal. Bus. & Prof. Code § 17200, *et seq.*, and for which this Court should issue injunctive and
2 equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages and
3 premium pay wrongfully withheld.

4 65. By the conduct alleged herein, Defendants' practices are also unlawful, unfair and
5 deceptive, in that Defendants' employment practices have caused Plaintiff and the Class Members
6 to be underpaid during their employment with Defendants.

7 66. By the conduct alleged herein, Defendants' practices are also unfair and deceptive,
8 in that Defendants' uniform policies, practices and procedures have failed to provide mandatory
9 meal breaks and/or to authorize and permit compliant rest periods to Plaintiff and the Class
10 Members.

11 67. By and through the unlawful and unfair business practices described herein,
12 Defendants have obtained valuable property, money and services from Plaintiff and the Class
13 Members, including earned wages for all straight-time and overtime worked and meal and rest
14 period premium wages, and have deprived them of valuable rights and benefits guaranteed by law
15 and contract, all to the detriment of these employees and to the benefit of Defendants, so as to
16 allow Defendants to unfairly compete against competitors who comply with the law.

17 68. All of the acts described herein as violations of, among other things, the I.W.C.
18 Wage Orders, the California Code of Regulations, and the Cal. Labor Code, are unlawful and in
19 violation of public policy, are immoral, unethical, oppressive and unscrupulous, are deceptive, and
20 thereby constitute unlawful, unfair, and/or deceptive business practices, in violation of Cal. Bus. &
21 Prof. Code § 17200, *et seq.*

22 69. Plaintiff and the Class Members are entitled to, and do, seek such relief as may be
23 necessary to restore to them the money and property that Defendants have acquired, or of which
24 Plaintiff and the Class Members have been deprived, by means of the above described unlawful
25 and unfair business practices, including earned but not limited to unpaid wages for all time worked.

26 70. Plaintiff and the Class Members are further entitled to, and do, seek a declaration
27 that the described business practices are unlawful, unfair and deceptive, and that injunctive relief
28 should be issued, restraining Defendants from engaging in any such unlawful and unfair business

1 practices in the future.

2 71. Plaintiff and the Class Members have no plain, speedy and/or adequate remedy at
3 law that will end the unlawful and unfair business practices of Defendants. Further, the practices
4 herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business
5 practices described herein, Plaintiff and the Class Members have suffered and will continue to
6 suffer irreparable legal and economic harm unless Defendants are restrained from continuing to
7 engage in these unlawful and unfair business practices.

8 72. Wherefore, Plaintiff and the other Class Members are entitled to equitable relief,
9 including restitution, attorney's fees and costs, declaratory relief, and a permanent injunction
10 enjoining Defendants from their unlawful and/or unfair activity.

11 **PRAYER FOR RELIEF**

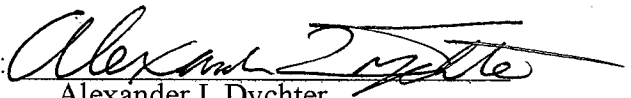
12 WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for
13 judgment against Defendants as follows:

- 14 A. An order certifying this case as a class action;
- 15 B. An order appointing Plaintiff as representative for the Class;
- 16 C. An order appointing Plaintiff's counsel as counsel for the Class;
- 17 D. Damages for unpaid straight-time and overtime wages;
- 18 E. Civil Penalties under Labor Code § 226(e);
- 19 F. Damages for unpaid premium pay owed for meal breaks that Defendants failed to
20 provide, pursuant to Labor Code § 226.7;
- 21 G. Damages for unpaid premium pay owed for rest periods that Defendants failed to
22 authorize and permit, pursuant to Labor Code § 226.7;
- 23 H. Damages for unpaid final wages, under Labor Code § 201 and/or § 202;
- 24 I. Penalty continuation wages, under Labor Code § 203;
- 25 J. Restitution for unpaid wages, under Cal. Bus. & Prof. Code § 17203;
- 26 K. Injunctive relief, under Labor Code § 226(h) and Cal. Bus. & Prof. Code § 17200, *et*
27 *seq.*, requiring that Defendants provide compliant, itemized wage statements and
28 cease and desist from their other unlawful and/or unfair employment practices;

- 1 L. Prejudgment interest at the maximum legal rate;
2 M. Reasonable attorneys' fees;
3 N. Costs of suit; and,
4 O. Such other relief as the Court may deem just and proper.
5

6 Dated: March 16, 2020

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

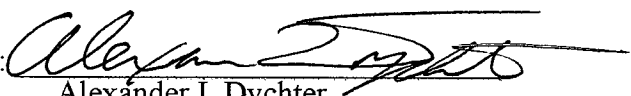
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9 By: 
Alexander I. Dychter
Attorneys for Plaintiff Niz
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11

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.
14

15 Dated: March 16, 2020

DYCHTER LAW OFFICES, APC
United Employees Law Group, PC

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18 By: 
Alexander I. Dychter
Attorneys for Plaintiff Niz
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