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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

BRIANNA THOMAS on behalf of herself and
all others similarly situated

Plaintiff,

vs.

BRINKER RESTAURANT CORPORATION
d.b.a., CHILI'S GRILL & BAR, and DOES 1
through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof;**
- 3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and Intentional Failure to Comply With Itemized Employee Wage Statement Provisions;**
- 6) Failure to Reimburse Business Expenses; and**
- 7) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

I.

INTRODUCTION

1. Plaintiff BRIANNA THOMAS (hereinafter “Plaintiff”) on behalf of herself and all similarly situated Non-Exempt Employees employed by Defendants in California (hereinafter referred to as “Non-Exempt Employees” or “Class Members”) assert the following Class Action claim, pursuant to Code of Civil Procedure section 382, against Defendant BRINKER RESTAURANT CORPORATION d.b.a., CHILI’S GRILL & BAR, and DOES 1 through 50, inclusive (hereinafter collectively referred to as "Defendants").

2. During the liability period, defined as the applicable statute of limitations for each and every cause of action contained herein, Defendants enforced shift schedules, employment policies and practices and/or workload requirements wherein Plaintiff and Non-Exempt Employees were, amongst other statutory violations not paid all lawful wages owed; not provided compliant rest and meal periods; not provided accurate itemized wage; not reimbursed for business related expenses and not paid timely wages at termination.

3. Plaintiff, on behalf of herself and Class Members, bring this action pursuant to Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1198, 2802 Title 8, Section 11050 and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

II.

VENUE

4. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous business activities in Orange County, California and is within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Orange County, California.

1 **III.**

2 **PARTIES**

3 5. Plaintiff is, and at all times mentioned in this complaint was, a resident of Orange
4 County, California.

5 6. On information and belief, Defendants were at all times mentioned herein
6 licensed and qualified to operate restaurants in California. On information and belief, Plaintiff
7 alleges that at all relevant times referenced herein Defendants did and continue to transact
8 business throughout California.

9 7. The true names and capacities of Defendants, whether individual, corporate,
10 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
11 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
12 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
13 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
14 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
15 true names and capacities of the Defendants designated hereinafter as DOES when such identities
16 become known.

17 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
19 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
20 Defendant are legally attributable to the other Defendants.

21 **IV.**

22 **FACTUAL BACKGROUND**

23 9. On information and belief, Defendants are licensed to do business in Orange
24 County, California, and own and operate restaurants in Orange County and other Counties
25 throughout California and the United States.
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1 10. Plaintiff was employed by Defendants from about February 20, 2019 through on
2 or about May 20, 2019. She was a server at Defendants' restaurant in Buena Park, California
3 restaurant.

4 11. During the liability period, Plaintiff and Class Members were required to perform
5 work off the clock either prior to the start of their work shift or during their scheduled meal
6 periods. For example, Plaintiff was, amongst other things, required to help other employees,
7 prepare food, and organize utensils prior to clocking-in. Plaintiff was not compensated for time
8 spent off the clock and under Defendants' control

9 12. During the liability period, Defendants' policy was that meal breaks were
10 scheduled depending on the needs of the restaurant. Due to the demands of work shifts, Plaintiff
11 and Class Members were frequently required to work in excess of five (5) hours without being
12 provided an uninterrupted thirty (30) minute meal period by the end of the fifth hour and were
13 not compensated one (1) hour of pay at their regular rate of compensation for each workday that
14 a compliant meal period was not provided. Defendants also failed to provide a second 30 minute
15 uninterrupted meal period by the end of the tenth hour when they worked in excess of 10 hours
16 and failing to provide compensation for such statutorily non-compliant meal periods, Defendants
17 violated Labor Code §512, California labor laws, and IWC Wage Order.

18 13. During the liability period, Defendants' policy was that rest breaks were scheduled
19 depending on the needs of the restaurant. Due to the time constraints resulting from the demands
20 of work shifts, Plaintiff and Class Members were frequently unable to take any rest breaks during
21 their work shift or had their rest breaks shortened to less than 10 minutes.

22 14. During the liability period, due to the workload requirements and time constraints
23 resulting from the demands of work shifts, Plaintiff and Class Members were not permitted to
24 take a minimum ten (10) minute rest period for every four hours or major fraction thereof
25 worked. Plaintiff and Class Members were not compensated one (1) hour of pay at her regular
26 rate of compensation for each workday that a rest period was not provided, in violation of
27 California labor laws, regulations, and IWC Wage Orders.
28

1 15. During the relevant time period, Defendants implemented a timekeeping policy
2 and practice for Non-Exempt Employees which rounded their clock-in times in a manner that
3 resulted in a loss of time worked. As a result, Non-Exempt Employees were consistently
4 underpaid and were required to work off the clock and without pay.

5 16. During the relevant time period, Defendants required Plaintiff and Class Members
6 to log on to Defendants' website and/or download the scheduling app "Hot Schedules" in order
7 to check their work schedules. Plaintiff and Class Members were not compensated for the use
8 their phones and/or personal devices as part of their required job duties.

9 17. During the relevant time period, Defendants have also failed to maintain accurate
10 itemized records reflecting total hours worked and have failed to provide Non-Exempt
11 Employees with accurate, itemized wage statements reflecting total hours worked and
12 appropriate rates of pay for those hours worked.

13 18. On information and belief, Defendant willfully failed to pay all earned wages in a
14 timely manner to Non-Exempt Employees; nor has Defendant paid to Non-Exempt Employees,
15 upon or after termination of their employment, all compensation due, including but not limited to
16 all wages owed and compensation for having failed to properly provide rest periods and meal
17 periods

18 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 currently employ and during the relevant period have employed approximately hundred (100)
20 employees in the State of California in non-exempt hourly positions.

21 20. Non-Exempt Employees employed by Defendants all times pertinent hereto, have
22 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.

24
25 V.

26 **CLASS ACTION ALLEGATIONS**

27 21. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
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1 are employed or have been employed to work in Defendants' restaurant located in Buena Park,
2 California and who are/were not classified as "Exempt" or primarily employed in executive,
3 professional, or administrative capacities within four (4) years prior to the date this lawsuit is
4 filed ("liability period") until resolution of this lawsuit (collectively referred to as the "Class"
5 and/or Class Members").

6 22. Plaintiff also seeks to represent Subclasses which are composed of persons
7 satisfying the following definitions:

8 a. All Non-Exempt Employees employed to work in Defendants'
9 restaurant located in Buena Park, California within the statutory liability period and who were
10 not accurately and fully paid all lawful wages owed to them including minimum wages and/or
11 proper overtime compensation for all their hours worked;

12 b. All Non-Exempt Employees employed to work in Defendants'
13 restaurant located in Buena Park, California within the statutory liability period and have not
14 been provided an uninterrupted 30 minute meal period when they worked over five hours in a
15 work shift by the end of the fifth hour and/or have not been provided a second 30 minute meal
16 break when worked shifts over ten hours and were not provided compensation in lieu thereof;

17 c. All Non-Exempt Employees employed by Defendants to work in
18 Defendants' restaurant located in Buena Park, California within the statutory liability period
19 and who have not been provided a minimum ten (10) minute rest period for every four (4)
20 hours or major fraction thereof worked per day and were not provided compensation in lieu
21 thereof;

22 d. All Non-Exempt Employees employed by Defendants to work in
23 Defendants' restaurant located in Buena Park, California within the statutory liability period
24 and were not timely paid all wages due and owed to them upon the termination of their
25 employment with Defendants; and

26 e. All Non-Exempt Employees employed by Defendants to work in
27 Defendants' restaurant located in Buena Park, California to within the statutory liability
28 period, and were not provided with accurate and complete itemized wage statements.

1 23. Plaintiff also seeks to represent a class comprised of and defined as: All persons
2 who are employed or have been employed to work in Defendants' restaurants in the state of
3 California during the liability period who were required to use their phones and/or personal
4 devices in the performance of any job related duties and were not reimbursed by Defendants for
5 the use of said devices ("Expense Reimbursement Class").

6 24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to
7 amend or modify the class description with greater specificity or further division into
8 subclasses or limitation to particular issues.

9 25. This action has been brought and may properly be maintained as a class action
10 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
11 defined community of interest in the litigation and the proposed Class is easily ascertainable.

12 **A. Numerosity**

13 26. The potential members of the Class as defined are so numerous that joinder of all
14 the members of the Class is impracticable. While the precise number of Class Members has not
15 been determined at this time, Plaintiff is informed and believes that Defendants currently
16 employ, and/or during the relevant time period employed, approximately over 100 Non-Exempt
17 Employees in California who are or have been affected by Defendants' unlawful practices as
18 alleged herein.

19 **B. Commonality**

20 27. There are questions of law and fact common to the Class predominating over any
21 questions affecting only individual Class Members. These common questions of law and fact
22 include, without limitation:

- 23 i. Whether Defendants violated Labor Code §§ 510, 1194 and applicable IWC
24 Wage Orders by failing to pay all earned wages including overtime compensation to
25 Non-Exempt Employees who worked "off the clock" and in excess of eight (8) hours in
26 a work day and/or more than forty (40) hours in a work week;
- 27 ii. Whether Defendants violated Labor Code §§ 226.7, 512 and applicable IWC
28 Wage Order by failing to provide statutorily compliant thirty (30) minute meal periods

1 to Non-Exempt Employees on days in which they worked in excess of five (5) hours
2 and/or ten (10) hours and failing to compensate said employees one hour wages in lieu
3 of meal periods;

4 iii. Whether Defendants violated Labor Code sections 226.7 and applicable IWC
5 Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods
6 to Non-Exempt Employees for every four hours or major fraction thereof worked and
7 failing to compensate said employees one (1) hours wages in lieu of rest periods;

8 iv. Whether Defendants violated sections 201-203 of the Labor Code by failing to
9 pay all earned wages and/or premium wages due and owing at the time that any Non-
10 Exempt Employees' employment with Defendants terminated;

11 v. Whether Defendants violated sections 226 of the Labor Code and applicable
12 IWC Wage Orders by failing to, among other violations, maintain accurate records of
13 Non-Exempt Employees' earned wages, work periods, meal periods and deductions;

14 vi. Whether Defendants violated section 2802 of the Labor Code by not
15 reimbursing employees for expenses incurred in being required to use their personal
16 phones and/or devices in the performance of their job duties; and

17 vii. Whether Defendants violated section 17200 *et seq.* of the Business and
18 Professions Code by failing to pay proper minimum and/or overtime wages to Non-
19 Exempt Employees; failing to provide proper rest and/or meal periods and failing to pay
20 compensation in lieu thereof; failing to timely pay wages, failing to keep accurate
21 records all in violation of Labor Code §§, 201, 202, 203, 204, 226, 226.7, 510, 512,
22 1194, 1198, 1199, 2802 and applicable IWC Wage Orders; and

23 viii. Whether Defendants violated section 17200 *et seq.* of the Business and
24 Professions Code and Labor Code sections §§ 201, 202, 203, 204, 221, 225, 226, 226.7,
25 510, 512, 1194, 1198, 1199, 2802 and applicable IWC Wage Orders which violation
26 constitutes a violation of fundamental public policy.

27 **C. Typicality**
28

28. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

D. Adequacy of Representation

29. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

30. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

31. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Including Overtime Wages
(Lab. Code §§ 510, 1194)
(Against All Defendants)

32. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

33. Defendants' policies, practices and work shift requirements resulted in Plaintiff and Non-Exempt Employees working "off the clock" and not receiving compensation for all earned wages including overtime in violation of California state wage and hour laws.

34. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non-Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

35. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working off the clock while subject to the control of Defendant all without pay. Labor Code §1197 provides that employees are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser wage than the established is unlawful.

36. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to represent have been deprived of compensation for all earned wages including overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194.

37. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Second Cause of Action

Failure to Provide Lawful Meal Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, 512, IWC Wage Orders)
(Against All Defendants)

38. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

39. By their failure to provide thirty (30) minute uninterrupted meal periods by the end of the fifth hour for days on which Non-Exempt Employees work(ed) work periods in excess of five (5) hours and/or failing to provide a second 30 minute uninterrupted meal period by the

1 end of the tenth hour when they worked in excess of 10 hours and failing to provide
2 compensation for such statutorily non-compliant meal periods, Defendants violated the
3 provisions of Labor Code §512 and applicable IWC Wage Orders.

4 40. By failing to record and maintain adequate and accurate time records according to
5 sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class
6 Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff
7 and Class Members.

8 41. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
9 represent have been deprived of premium wages in amounts to be determined at trial, and are
10 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
11 §226.7.

12 42. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
13 described herein and below.

14
15 **Third Cause of Action**
16 Failure to Provide Rest Periods
17 Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)
(Against All Defendants)

18 43. Plaintiff repeats and incorporates herein by reference each and every allegation set
19 forth above, as though fully set forth herein.

20 44. By their failure to authorize and permit a minimum ten (10) minute rest period for
21 every four (4) hours or major fraction thereof worked per day by Non-Exempt Employees, and
22 failing to provide compensation for such non-provided rest periods, as alleged above, Defendants
23 willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

24 45. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to
25 represent have been deprived of premium wages in amounts to be determined at trial, and are
26 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
27 §226.7.

1 46. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
2 described herein and below.

3
4 **Fourth Cause of Action**
5 Failure to Timely Pay Wages Due At Termination
6 Lab. Code §§ 201-203, 227.3)
 (Against All Defendants)

7 47. Plaintiff incorporates by reference and realleges each and every allegation
8 contained above, as though fully set forth herein.

9 48. Sections 201 and 202 of the California Labor Code require Defendants to pay its
10 employees all wages due within 72 hours of termination of employment. Section 203 of the
11 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
12 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
13 full or an action is commenced. The penalty cannot exceed 30 days of wages.

14 49. Plaintiff and affected class members are entitled to compensation for all forms of
15 wages earned, including compensation for non provided rest and meal periods, but to date have
16 not received such compensation therefore entitling them Labor Code section 203 penalties.

17 50. More than 30 days have passed since Plaintiff and affected Class Members have
18 left Defendants' employ, and on information and belief, have not received payment pursuant to
19 Labor Code §203. As a consequence of Defendants' willful conduct in not paying all earned
20 wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
21 section 203 for failure to pay legal wages.

22 51. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
23 described herein and below.

24
25 **Fifth Cause of Action**
26 Knowing and Intentional Failure to Comply With Itemized Employee
27 Wage Statement Provisions
 (Lab. Code § 226(b))
 (Against All Defendants)

52. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

53. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

54. Plaintiff and Class Members have been injured by Defendants' actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

55. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violations.

56. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as described herein and below.

Sixth Cause of Action

Failure to Reimburse Employees for Expenditures

(Lab. Code § 2802)

(Against All Defendants)

57. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

58. As set forth above, Section 2802 of the California Labor Code requires Defendants to reimburse employees for all necessary expenditures incurred in direct consequence of the discharge of his duties.

59. Defendants violated Section 2802 by, among other things, failing to reimburse

1 Plaintiff and Class Members for expenditures incurred for using personal cellular phone in the
2 performance of job duties.

3 60. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
4 represent have incurred expenditures in amounts to be determined at trial.

5 61. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
6 described herein and below.

7
8 **Seventh Cause of Action**
9 Violation of Unfair Competition Law
10 (Bus. & Prof. Code, §§ 17200-17208)
11 (Against All Defendants)

12 62. Plaintiff repeats and incorporates herein by reference each and every allegation
13 set forth above, as though fully set forth herein.

14 63. Business & Professions Code Section 17200 provides:

15 As used in this chapter, unfair competition shall mean and include any **unlawful,**
16 **unfair** or fraudulent business act or practice and unfair, deceptive, untrue or
17 misleading advertising and any act prohibited by Chapter 1 (commencing with
18 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)
19 (Emphasis added.)

20 64. Defendants' violations of the Labor Code and Wage Order provisions set forth
21 above constitute unlawful and/or unfair business acts or practices.

22 65. The actions of Defendants, as alleged within this Complaint, constitute false,
23 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of
24 Business and Professions Code section 17200, *et seq.*

25 66. Plaintiff and Class Members have been personally aggrieved by Defendants'
26 unlawful and unfair business acts and practices alleged herein.

27 67. As a direct and proximate result of the unfair business practices of Defendants,
28 and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is
entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and
members of the Plaintiff Class as a result of the business acts and practices described herein.

1 68. WHEREFORE, Plaintiff and the Class she seeks to represent request relief as
2 described herein and below.

3
4 **VII.**

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment as follows:

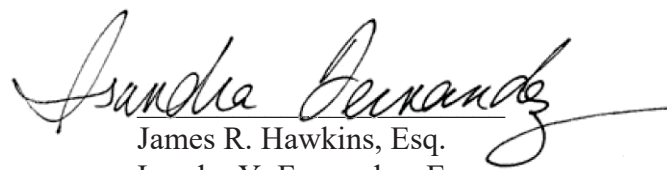
- 7 1. That the Court determine that this action may be maintained as a class action;
8 2. For compensatory damages in an amount according to proof with interest thereon;
9 3. For economic and/or special damages in an amount according to proof with interest
10 thereon;
11 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
12 5. For premium pay and penalties pursuant to Labor Code §§203,226;
13 6. For attorneys' fees, interests and costs of suit under Labor Code §§ 1194; and
14 7. For such other and further relief as the Court deems just and proper.

15
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

18
19
20 **Dated: April 29, 2020**

JAMES HAWKINS, APLC

21 

22 James R. Hawkins, Esq.

23 Isandra Y. Fernandez, Esq.

24 Attorneys for Plaintiff

25 BRIANNA THOMAS