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12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF BUTTE**

14 EMIKO FUJIMOTO,

15 Plaintiff,

16 vs.

17 NABE-YA, INC., a California Corporation;
18 WATANABE HILLS, INC., a California
19 Corporation; IZAKAYA ICHIBAN, an
20 Unknown Business Entity; MASAYASU
21 WATANABE, an Individual; REIKO
22 WATANABE, an Individual; and DOES 1 to
23 100, inclusive,

24 Defendants.

Case No. 20CV01255

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES:**

1. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194)
2. Failure to Pay Minimum Wages (Labor Code § 1194)
3. Failure to Provide Meal Periods (Labor Code §§ 512, 226.7)
4. Failure to Provide Rest Periods (Labor Code §§ 226.7)
5. Failure to Provide Accurate Itemized Statements (Labor Code § 226)
6. Waiting Time Penalties (Labor Code §§ 201-203)
7. Failure to Provide Reimbursement Expenses (Labor Code § 2802)
8. Failure to Keep Accurate Time Records (Labor Code § 1174)
9. Violation of Labor Code section 1102.5
10. Failure to Provide Personnel Records Upon Request (Labor Code § 1198.5)
11. Unfair Competition Law (Business & Professions Code §§ 17200, *et seq.*)
12. Private Attorneys General Act (Labor Code § 2699, *et seq.*)

DEMAND FOR JURY TRIAL

1 Plaintiff EMIKO FUJIMOTO (“Plaintiff”) hereby files this Complaint against Defendants
2 NABE-YA, INC., a California Corporation; WATANABE HILLS, INC., a California Corporation;
3 IZAKAYA ICHIBAN, an Unknown Business Entity; MASAYASU WATANABE, an Individual;
4 REIKO WATANABE, an Individual; and DOES 1 to 100, inclusive (hereinafter all collectively
5 referred to as “Defendants”). On information and belief, Plaintiff alleges the following:

6 **INTRODUCTION**

7 1. In this Complaint, Plaintiff seeks unpaid overtime and minimum wages, unpaid meal and
8 rest period premiums, unpaid reimbursement expenses, and derivative penalties for inaccurate wage
9 statements and inaccurate time records. Plaintiff is also seeking civil penalties under the Private
10 Attorneys General Act (“PAGA”) for violations of the California Labor Code and applicable wage
11 orders. In addition to this, Plaintiff seeks damages, penalties, and attorney’s fees for an unlawful,
12 retaliatory termination in violation of the California Labor Code. Plaintiff seeks these unpaid wages,
13 damages, and penalties, plus interest and attorney’s fees, on behalf of herself and is seeking civil
14 penalties on behalf of the Labor and Workforce Development Agency (“LWDA”) and Aggrieved
15 Employees.

16 2. During all relevant times, Plaintiff was a misclassified, salaried employee of Defendants.
17 Because Defendants systematically misclassified Plaintiff and Aggrieved Employees, or otherwise failed
18 to adhere to the California Labor Code, Defendants had a uniform practice of failing to pay Plaintiff and
19 Aggrieved Employees overtime wages earned, and minimum wages for all hours worked, and even had
20 a practice of failing to keep track of all of their hours worked. Defendants also did not provide all meal
21 and rest periods to Plaintiff and Aggrieved Employees and further failed to pay all applicable meal and
22 rest period premiums to Plaintiff and Aggrieved Employees for these missed meal and rest periods. As a
23 result of these uniform practices, Defendants did not properly itemize and identify Plaintiff and
24 Aggrieved Employees’ total hours worked, applicable hourly rates, the corresponding hours worked at
25 each hourly rate on their wage statements and did not pay Plaintiff and Aggrieved Employees all wages
26 due at the time of their separation or termination. Further, Defendants failed to reimburse Plaintiff and
27 Aggrieved Employees all reimbursement expenses incurred. In addition to this, when Plaintiff reported
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1 to Defendants that she was owed back wages, she was terminated from her employment in violation of
2 the California Labor Code.

3 **JURISDICTION AND VENUE**

4 3. The Butte County Superior Court has jurisdiction in this matter pursuant to California
5 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
6 California Business and Professions Code, and Wage Order No. 5.

7 4. Venue is proper pursuant to Civil Procedure Code sections 395(a), and 395.5, in that
8 some of the wrongful acts and violations of law asserted herein occurred within Butte County, and
9 Defendants' obligation to pay wages arose in Butte County pursuant to *Madera Police Officers Assn. v.*
10 *City of Madera*, 36 Cal.3d 403, 414 (1984).

11 5. Plaintiff has sought permission pursuant to Labor Code sections 2699 *et seq.* to pursue
12 the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of
13 herself and other Aggrieved Employees. Pursuant to California Labor Code section 2699.3, Plaintiff
14 gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA")
15 on June 10, 2020. In this written notice, Plaintiff provided facts and legal bases for her claims within the
16 notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
17 Plaintiff also submitted the \$75.00 filing fee. The notice was also sent via certified mail to Defendants
18 on the same day it was uploaded to the LWDA. Plaintiff is informed and believes that, to date, the
19 LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is
20 informed and believes that she has exhausted all administrative remedies pursuant to the Private
21 Attorneys General Act ("PAGA") and may bring this action on behalf of herself and all other Aggrieved
22 Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134
23 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

24 **PARTIES**

25 6. EMIKO FUJIMOTO is an individual over the age of eighteen (18) and is a resident of the
26 State of California.

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1 7. On information and belief, Plaintiff alleges NABE-YA, INC. (DBA BIG TUNA SUSHI
2 BISTRO) is now and/or at all times mentioned in this Complaint was a California Corporation and the
3 owner and operator of an industry, business and/or facility doing business in the State of California.

4 8. On information and belief, Plaintiff alleges WATANABE HILLS, INC. (DBA
5 IZAKAYA ICHIBAN) is now and/or at all times mentioned in this Complaint was a California
6 Corporation and the owner and operator of an industry, business and/or facility doing business in the
7 State of California.

8 9. On information and belief, Plaintiff alleges IZAKAYA ICHIBAN is now and/or at all
9 times mentioned in this Complaint was an Unknown Business Entity and the owner and operator of an
10 industry, business and/or facility doing business in the State of California.

11 10. On information and belief, Plaintiff alleges MASAYASU WATANABE is now and/or at
12 all times mentioned in this Complaint was an individual over the age of eighteen (18) and is a resident of
13 the State of California. Plaintiff further alleges that MASAYASU WATANABE is an owner, director,
14 officer, and/or managing agent of NABE-YA, INC., WATANABE HILLS, INC., and IZAKAYA
15 ICHIBAN, and is responsible for causing the violations outlined in the first through twelfth causes of
16 action. As such, MASAYASU WATANABE is individually liable pursuant to California Labor Code
17 section 558.1.

18 11. On information and belief, Plaintiff alleges REIKO WATANABE is now and/or at all
19 times mentioned in this Complaint was an individual over the age of eighteen (18) and is a resident of
20 the State of California. Plaintiff further alleges that REIKO WATANABE is an owner, director, officer,
21 and/or managing agent of NABE-YA, INC., WATANABE HILLS, INC., and IZAKAYA ICHIBAN,
22 and is responsible for causing the violations outlined in the first through twelfth causes of action. As
23 such, REIKO WATANABE is individually liable pursuant to California Labor Code section 558.1.

24 12. DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of
25 NABE-YA, INC., WATANABE HILLS, INC., and IZAKAYA ICHIBAN, corporate or otherwise, who
26 participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint
27 to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times
28 mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was

1 acting within the course and scope of such agency or employment. The Defendants are, therefore,
2 jointly and severally liable to Plaintiff.

3 13. At all times mentioned herein, each Defendant was the agent or employee of each of the
4 other Defendants and was acting within the course and scope of such agency or employment. The
5 Defendants are jointly and severally liable to Plaintiff.

6 14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
7 were members of and/or engaged in a joint employment, joint venture, partnership and common
8 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
9 joint venture, partnership and common enterprise.

10 15. Defendants, and each of them, now and/or at all times mentioned in this Complaint
11 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12 16. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
13 wrongs, complaints, injuries and/or damages alleged in this Complaint.

14 **GENERAL ALLEGATIONS**

15 17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though
16 fully set forth herein.

17 18. Plaintiff began working for Defendants on or about August 3, 2017, as a Chef, making
18 approximately \$48,000 per year as a misclassified, exempt employee. Plaintiff primarily worked at Big
19 Tuna Sushi Bistro, located at 1722 Mangrove Ave., Suite 18, Chico, CA 95926. However, from June
20 2019 to December 2019, Plaintiff worked at Izakaya Ichiban, Defendants' other restaurant location in
21 Chico. Between the two restaurants, Defendants regularly employ sixty (60) people.

22 19. While working for Defendants, Plaintiff's pay rate remained consistent; however, in
23 June 2019 up to Plaintiff's termination in May of 2020, she made an additional \$500.00 per month as a
24 rent stipend. Thus, from June 2019 to May 13, 2020, Plaintiff made a salary of \$54,000 a year. Given
25 Plaintiff's salary in 2019 and 2020, and California's applicable minimum wage in those years, there
26 were periods of Plaintiff's employment with Defendants where she did not make double the minimum
27 wage sufficient to qualify for the executive exemption, regardless of her job duties.

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1 20. Plaintiff's work schedule and hours also remained consistent throughout her tenure with
2 Defendants. On average, Plaintiff worked Wednesday through Sunday from approximately 8:30 a.m.
3 to 10:30 p.m., with a one (1) to two (2) hour break from approximately 3 p.m. to 5 p.m. Although
4 Plaintiff was told by her managers that her position entailed management responsibilities, in reality,
5 Plaintiff spent the majority (well over 50%) of her day working side-by-side with other cooks to
6 prepare and cook food for restaurant customers.

7 21. For instance, when Plaintiff arrived to work in the morning, she prepped the kitchen for
8 lunch, including starting the fryer, cooking rice, washing towels, and cutting vegetables and fish. Then,
9 both during the lunch and dinner hours, Plaintiff worked alongside other cooks to fill customer orders
10 and prepare dishes. At the end of the evening, Plaintiff would work with other staff to clean the
11 kitchen, prepare for the next day, and close the restaurant.

12 22. In addition to engaging in little to no management responsibilities, Plaintiff also spent
13 minimal time (approximately 10%) supervising the other restaurant cooks and staff. Many of the other
14 cooks and staff were seasoned veterans and knew what they needed to do to complete their jobs
15 satisfactorily. Thus, the majority (approximately 90%) of Plaintiff's time working was spent cooking
16 and prepping food, and other non-managerial and non-supervisory duties, as outlined above.

17 23. Plaintiff and Aggrieved Employees also did not have the authority to hire and fire staff.
18 For the most part, this was the job of Defendant REIKO WATANABE. REIKO WATANABE was
19 also the person that was primarily responsible for making the schedule. In the last year of Plaintiff's
20 employment, Defendants also hired a restaurant manager, whose primary job was to supervise and
21 manage employees.

22 24. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours a day and
23 forty (40) hours a week. In fact, even assuming that Plaintiff was able to take her full two-hour,
24 afternoon break, she still worked approximately twelve (12) hours a day, or sixty (60) hours per week.
25 Despite this, Defendants failed to pay Plaintiff for all hours worked and overtime hours due. Indeed,
26 Defendants flatly refused to keep track of Plaintiff's hours worked.

27 25. In addition to failing to pay Plaintiff and Aggrieved Employees for all hours worked,
28 Defendants did not reimburse Plaintiff and Aggrieved Employees for the use of their personal cell

1 phone for work purposes, as well as for other work-related supplies, such as aprons. Defendants also
2 failed to provide Plaintiff and Aggrieved Employees with accurate, itemized wage statements.

3 26. Finally, Defendants failed to provide Plaintiff and Aggrieved Employees with their
4 earned sick days based on the hours worked because Defendants' paystubs did not track Plaintiff and
5 Aggrieved Employees' hours, or corresponding sick days accrued. As a result of such policies,
6 Defendants prevented Plaintiff from taking her earned sick days.

7 27. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all time
8 worked and failure to pay meal and rest period premiums, Defendants failed to provide all final wages
9 owed to Plaintiff within twenty-four (24) hours of her termination or seventy-two (72) hours of her
10 resignation.

11 28. On or about May 13, 2020, Plaintiff, approached Defendant REIKO WATANABE, and
12 advised her that she believed that she was owed past overtime wages. In fact, Plaintiff even provided
13 REIKO WATANABE with a very rough, highly reduced, estimate of the overtime hours owed to her
14 pursuant to California law. In response to this, REIKO WATANABE immediately sent Plaintiff home
15 from work. A few days later, on approximately May 18, 2020, REIKO WATANABE asked Plaintiff to
16 come and meet her and the restaurant manager. When Plaintiff arrived at the meeting, REIKO
17 WATANABE handed Plaintiff a release and severance agreement, as well as her final paycheck.
18 Plaintiff took the agreement and said she would look over it. Plaintiff, however, did not to sign the
19 agreement.

20 29. Since her termination, Plaintiff, through her counsel of record, has requested her
21 personnel file from Defendants multiple times - beginning with her initial written request on May 28,
22 2020. To date, Plaintiff has not received the requested personnel records.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **(As to all Defendants)**

27 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
28 set forth herein.

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31. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 5, section (3)(A); Cal. Lab. Code §§ 510, 1194.

32. Plaintiff and Aggrieved Employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. Defendants, however, failed to compensate Plaintiff and Aggrieved Employees for all overtime hours worked at the regular rate of pay.

33. Plaintiff and Aggrieved Employees were not exempt from overtime protections under the California Wage Orders and Labor Code.

34. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff with at least California's applicable minimum for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.

37. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

38. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though fully set forth herein.

40. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

41. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

42. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

43. Defendants employed Plaintiff and Aggrieved Employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and Aggrieved Employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and Aggrieved Employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and Aggrieved Employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and Aggrieved Employees did not waive their rights to all meal periods throughout their employment.

44. Defendants further failed to pay Plaintiff and Aggrieved Employees the applicable meal period premiums for any such missed meal periods.

45. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully set forth herein.

47. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

48. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

49. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

50. Defendants further failed to pay Plaintiff and Aggrieved Employees the applicable rest period premiums for any such missed rest periods.

51. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

53. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and

1 *the last four digits of his or her social security number or an employee*
2 *identification number other than a social security number, (8) the name*
3 *and address of the legal entity that is the employer and, if the employer is*
4 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
5 *name and address of the legal entity that secured the services of the*
6 *employer, and (9) all applicable hourly rates in effect during the pay*
7 *period and the corresponding number of hours worked at each hourly rate*
8 *by the employee. The deductions made from payment of wages shall be*
9 *recorded in ink or other indelible form, properly dated, showing the*
10 *month, day, and year, and a copy of the statement and the record of the*
11 *deductions shall be kept on file by the employer for at least three years at*
12 *the place of employment or at a central location within the State of*
13 *California.*

14 54. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
15 itemized statement or failed to provide an accurate and complete itemized statement showing the
16 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
17 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
18 and double time hours worked and corresponding rates of pay, and gross and net wages earned.
19 Plaintiff and Aggrieved Employees were not able to promptly and easily determine their total hours
20 worked from their paystubs alone. Additionally, Plaintiff and Aggrieved Employees suffered
21 confusion over whether they received all wages owed and was prevented from effectively
22 challenging information on their wage statements.

23 55. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees
24 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here
25 to the extent pertinent as if set forth here in full.

26 **SIXTH CAUSE OF ACTION**
27 **WAITING TIME PENALTIES**
28 **(As to all Defendants)**

56. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 55 as though fully
set forth herein.

57. An employer must pay an employee who is terminated all unpaid wages immediately
upon termination. *See* Cal. Lab. Code § 201.

58. An employer must pay an employee who resigns all unpaid wages within seventy-two
(72) hours of their resignation. *See* Cal. Lab. Code § 202.

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59. Plaintiff and Aggrieved Employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

60. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

61. Defendants knew of their obligation to pay Plaintiff and Aggrieved Employees their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and Aggrieved Employees were not paid for all regular and overtime hours worked and meal and rest premiums owed at the time their termination. Such conduct shows Defendants had knowledge of wages owed at the time of separation, yet Defendants still refused to pay the remaining wages.

62. As a proximate result of the Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged and deprived of wages and thereby seek the daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. California Labor Code section 2802(a) states that, “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

65. Defendants required Plaintiff and Aggrieved Employees to use their cell phones for work purposes and pay for other work-related items but failed to reimburse her for such use and payments.

66. As a proximate result of Defendants' conduct, Plaintiff and Aggrieved Employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
FAILURE TO KEEP ACCURATE TIME RECORDS
(As to Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. California Labor Code section 1174(d) provides that employers must keep “payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

69. California Industrial Wage Order No. 4, section (7)(A) further requires employers to “keep accurate information with respect to each employee including the following:

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals . . . shall also be recorded.

(5) Total hours worked in the payroll period and applicable rates of pay.

70. Throughout Plaintiff and Aggrieved Employees’ employment with Defendants, Defendants did not keep accurate information regarding all hours worked or meal periods taken. As elaborated above, Defendants had a practice of not keeping track of all hours that Plaintiff and Aggrieved Employees worked.

71. Plaintiff and Aggrieved Employees were not exempt under the Wage Order.

72. As a direct and proximate result of Defendants’ conduct, California Labor Code section 1174 has been violated throughout the duration of Plaintiff and Aggrieved Employees’ employment. Plaintiff and Aggrieved Employees are, therefore, entitled to, and seek, penalties pursuant to California Labor Code section 1174.5.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 1102.5
(As to all Defendants)

73. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 72 as though fully set forth herein.

74. Labor Code section 1102.5(a) states that an employer may not “make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a . . . person with authority over the employee, or to another employee who has authority to investigate, discover, or

1 correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the
2 information discloses a violation of state or federal statute, or a violation of or noncompliance with a
3 local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the
4 employee's job duties."

5 75. An employer also may not "retaliate against an employee for disclosing information, or
6 because the employer believes that the employee disclosed or may disclose information, to a
7 government or law enforcement agency, to a person with authority over the employee or another
8 employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . . if
9 the employee has reasonable cause to believe that the information discloses a violation of state or federal
10 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
11 whether disclosing the information is part of the employee's job duties." Cal. Labor Code § 1102.5(b).

12 76. Lastly, an employer may "not retaliate against an employee for refusing to participate in
13 an activity that would result in a violation of state or federal statute, or a violation or noncompliance
14 with a state or federal rule or regulation." Cal. Labor Code § 1102.5(c).

15 77. Plaintiff had a reasonable, good faith belief that Defendants' practice of failing to pay
16 regular and overtime hours owed to her was against the law. Plaintiff was terminated for reporting to
17 her employer that she was owed unpaid overtime hours, which she believed was a violation of the law.

18 78. Plaintiff had a reasonable, good faith belief that Defendants' work practices was against
19 the law.

20 79. Defendants' aforesaid acts in retaliating against and terminating Plaintiff for reporting
21 unlawful activity was illegal and a reckless disregard for the rights and sensibilities of Plaintiff.

22 80. Plaintiff suffered damages proximately caused by these Defendants' wrongful acts as
23 stated in the section below entitled "DAMAGES" which is incorporated here to the extent pertinent as if
24 set forth in full.

25 **TENTH CAUSE OF ACTION**
26 **FAILURE TO PROVIDE PERSONNEL RECORDS UPON REQUEST**
27 **(As to all Defendants)**

28 81. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 80 as though fully
set forth herein.

1 82. Labor Code section 1198.5(a) provides that every current and former employee, or his or
2 her representative, can inspect and receive a copy of the personnel records that the employer maintains
3 relating to the employee's performance. Labor Code section 1198.5(b) further provides that the
4 employer shall make the contents of those personnel records available for inspection not later than thirty
5 (30) days from the date the employer receives a written request. Failure to do so can result in a penalty
6 of \$750.00, pursuant to Labor Code section 1198.5(k).

7 83. On May 28, 2020, Plaintiff requested records pursuant to Labor Code section 1198.5.
8 Defendants, however, failed to produce the requested records in a timely manner and/or at all. As a
9 result, Defendants violated Labor Code section 1198.5.

10 84. As a proximate cause of Defendants' failure to provide the requested records in a timely
11 manner, Plaintiff was damaged as stated in the section below entitled "DAMAGES," which is
12 incorporated here to the extent pertinent as if set forth here in full.

13 **ELEVENTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION**
15 **(As to Defendants NABE-YA, INC., WATANABE HILLS, INC.,**
16 **IZAKAYA ICHIBAN and DOES 1 to 100)**

17 85. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 84 as though fully
18 set forth herein.

19 86. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
20 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
21 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
22 California Business and Professions ("B&P") Code §§ 17200, *et seq.*

23 87. Plaintiff was not paid all wages owed, including minimum and overtime wages and meal
24 and rest period premiums, paid sick leave, and reimbursement for business expenses, during her
25 employment or any time thereafter.

26 88. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
27 California Unfair Competition Law ("UCL") (Business and Professions Code 17200, *et seq.*) pursuant to
28 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

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89. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code § 17203), Plaintiff is entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

TWELFTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to All Defendants)

90. Plaintiff incorporates by reference and re-allege paragraphs 1 through 89 as though fully set forth herein.

91. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other current and former Aggrieved Employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code section 226.3, 1174 (Failure to Maintain Accurate Records);
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) and 12(B) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave);
- Violation of Labor Code § 2802 (Failure to Provide Reimbursements);

- Violation of Labor Code § 1198.5 (Failure to Provide Personnel Records); and
- Violation of Labor Code § 1102 (Whistleblower Retaliation).

92. Plaintiff and Aggrieved Employees seek civil penalties against Defendants as provided in the Labor Code, or if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

93. Plaintiff and Aggrieved Employees seek these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action (Failure to Pay Overtime):
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action (Failure to Pay Minimum Wages):
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action (Failure to Provide Meal Periods):
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action (Failure to Provide Rest Periods):
 - a. Wages in an amount to be proven at trial;

- 1 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
2 section 1021.5;
- 3 6. As to the Fifth Cause of Action (Wage Statement Violations):
- 4 a. Penalties as provided for in Labor Code section 226, including the greater of all
5 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
6 violation occurred and one hundred dollars (\$100.00) per employee for each
7 violation in the subsequent pay periods, but not to exceed four thousand dollars
8 (\$4,000.00);
- 9 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
10 226(e);
- 11 7. As to the Seventh Cause of Action (Failure to Pay Reimbursements):
- 12 a. Wages in an amount to be proven at trial;
- 13 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 14 8. As to the Eighth Cause of Action (Failure to Maintain Accurate Records)
- 15 a. Penalties as provided for in Labor Code section 1174.5;
- 16 9. As to the Ninth Cause of Action (Violation of Labor Code section 1102.5):
- 17 a. For compensatory damages, including lost wages, earnings, retirement benefits,
18 and other employee benefits, and all other sums of money, together with interest
19 on these amounts;
- 20 b. For a money judgment for mental pain and anguish and emotional
21 distress;
- 22 c. Penalties in the amount of \$10,000.00 pursuant to Labor Code
23 section 1102.5(f);
- 24 d. For an award of punitive damages, according to proof;
- 25 10. As to the Tenth Cause of Action (Violation of Labor Code section 1198.5):
- 26 a. Penalties pursuant to Labor Code section 1198.5(k);
- 27 b. Reasonable attorney's fees and costs pursuant to Labor Code section 1198.5(l);

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