

1 BRYAN SCHWARTZ LAW
2 BRYAN J. SCHWARTZ (SBN 209903)
3 RYAN T. CHIN (SBN 281777)
4 180 Grand Avenue, Suite 1380
5 Oakland, California 94612
6 Tel. (510) 444-9300
7 Fax (510) 444-9301
8 Email: bryan@bryanschwarzlaw.com
9 rchin@bryanschwarzlaw.com

10 *Attorneys for Plaintiffs Individually and all others similarly situated*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

11 ASHLEY SHAW and MARIO PARRA,
12 on behalf of themselves and all others
13 similarly situated,

14 Plaintiffs,

15 vs.

16 BEVERAGES & MORE!, INC., a
17 Delaware corporation; and DOES 1
18 through 10, inclusive,

19 Defendants.

CASE NO.: _____

**CLASS ACTION COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF**

UNLIMITED CIVIL

- (1) Failure to Provide and/or Authorize Rest
Periods/Unpaid Wages in Violation of
California Labor Code §§ 226.7 and 512;**
- (2) Failure to Provide and/or Authorize Meal
Periods/Unpaid Wages in Violation of
California Labor Code §§ 226.7 and 512;**
- (3) Failure to Pay Overtime in Violation of
California Labor Code §§ 510, 558, 1194 *et*
seq., 1197.1, 1198 and IWC Wage Orders;**
- (4) Failure to Pay Minimum Wage in
Violation of California Labor Code §§ 1194,
1194.2, 1197, 1197.1, and IWC Wage Orders;**
- (5) Failure to Provide Timely, Accurate,
Itemized Wage Statements in Violation of
California Labor Code §§ 226, 1174; and**
- (6) Failure to Pay Earned Wages Upon
Discharge, Waiting Time Penalties in
Violation of Labor Code §§ 201-204;**
- (7) Unlawful and/or Unfair Business Practices
in Violation of California Business and
Professions Code §§ 17200, *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiffs Ashley Shaw and Mario Parra, on behalf of themselves and on behalf of all
2 others similarly situated, allege against Defendant Beverages & More, Inc. (“BevMo!” or
3 “Defendant”) as well as DOES 1 through 10, inclusive, as follows:

4 **I. PRELIMINARY STATEMENT**

5 1. This class action seeks relief from Defendant BevMo!’s failure to properly
6 compensate its workforce. BevMo! is privately held corporation, doing business in California,
7 that mainly sells alcoholic beverages.

8 2. Plaintiffs seek to represent Defendant’s Floor Workers, the workers who
9 complete stocking, cart attendance, and supervisory roles. Such Floor Workers include cashiers,
10 service leads, receivers, and assistant store managers.

11 3. Defendant has a policy that requires there be two employees in the store at all
12 times to cover the floor and maintain safety (“Two-Person Policy”). If there are not at least two
13 employees in the store, the store cannot open or remain open to the public.

14 4. Defendant’s Two-Person Policy prevents its Floor Workers from taking rest
15 breaks for any shift over 3.5 hours and meal breaks within the first 5 hours of working.

16 5. Defendant is aware that its Two-Person Policy prevents its Floor Workers from
17 taking rest breaks and meal periods on time and/or at all.

18 6. The missed rest breaks and missed and/or on-duty meal periods that result from
19 Defendant’s Two-Person Policy are unlawful.

20 7. Defendant fails to pay premiums to each Class Member for missed rest breaks,
21 each Missed or Non-Compliant Meal Period Subclass Member for missed meal breaks, and
22 each On-Duty Meal Period Subclass Member for on-duty meal periods as required by state law.

23 8. Plaintiffs seek relief for the Class and all Subclass Members pursuant to
24 applicable state law, rules, regulations, and Wage Orders of the Industrial Welfare Commission
25 (“IWC”). The relief sought is to remedy Defendant’s failure to provide appropriate rest and
26 meal breaks, pay appropriate minimum and overtime wage compensation, pay premiums for on-
27 duty rest and meal periods, in addition to restitution, interest, penalties, and injunctive relief.

9. The class claims in this action are brought pursuant to California Code of Civil Procedure (“CCP”) § 382 on behalf of Floor Workers (“Class Members”) during the period commencing four years prior to this action’s filing date through the date of final disposition of this action (the “Class Period”).

II. THE PARTIES

10. Plaintiff Ashley Shaw has been working for BevMo! as an Associate Store Manager since July 2018 and currently still holds that title. She performs her services at a BevMo! store located in San Ramon, California.

11. Plaintiff Mario Parra worked for BevMo! as a cashier from February 2019 to March 2019 and then as a service lead from April 2019 to March 2020. He performed his services at a BevMo! store located in San Ramon, California.

12. Defendant BevMo! is a privately-held corporation that is headquartered in Concord, California. It operates approximately 160 stores and offers delivery services in California, Arizona, Oregon, and Washington state, among other places.

13. Does 1-10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs. When their true names and capacities are ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities herein. Plaintiffs are informed and believe and thereupon allege that each of the fictitiously-named Defendant is responsible in some manner for the occurrences herein alleged, and that the damages of Plaintiffs and the putative Class and Subclasses herein alleged were proximately caused by such Defendant.

14. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein was at all times relevant to this action the agent, employee, representative partner, and/or joint venture of the remaining Defendants and was acting within the course and scope of the relationship. Plaintiffs are further informed, believe, and thereon allege that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining Defendants.

III. VENUE

15. Venue in the County of Contra Costa is proper under California Code of Civil Procedure §§ 395(a) and 395.5, because BevMo!’s principal place of business is situated in the County of Contra Costa.

IV. GENERAL FACTUAL ALLEGATIONS

16. Plaintiffs and all Class and Subclass Members perform and performed general store services for Defendant BevMo!, including stocking and floor supervisory roles.

17. Defendant has a policy that requires two employees to be on the floor at all times. Defendant states that two employees should be in the store at all times to cover the building for safety.

18. As a result of the Two-Person Policy, Defendant has routinely required Plaintiffs and other Class Members to miss their rest breaks.

19. Defendant expects its employees to continue to adhere to the Two-Person Policy, impeding employees’ ability to take uninterrupted, duty-free meal breaks. Defendant is also aware of and has identified meal break violations occurring as a result of the Two-Person Policy. Defendant acknowledges that there should be overlap between employee schedules to allow for proper lunches, but if for some reason that cannot happen due to a work-related call (or “call out”) and only two people are on the floor with no one coming into a store, then the employee is expected to miss their duty-free meal period.

20. In practice, Defendant’s Two-Person Policy and employee schedules continue to allow meal break violations to occur. Employee schedules crafted by Defendant often do not allow proper coverage of more than two employees in the store during meal breaks, preventing Plaintiffs, the Missed or Non-Compliant Meal Period Subclass, and the On-Duty Meal Period Subclass from taking appropriate, uninterrupted, duty-free meal breaks within the first five hours of a shift.

21. As a result of the Two-Person Policy, Plaintiffs and other On-Duty Meal Period Subclass Members have not always been relieved of all duties and control by Defendant and

1 must take on-duty meal periods. Defendant requires that if only two employees are on the store
2 floor with no customers coming in, then lunch should be taken in the store for safety reasons.

3 22. As a result of the Two-Person Policy, Plaintiffs and Missed or Non-Compliant
4 Meal Period Subclass Members often have to miss their meal periods. Plaintiffs were forced to
5 clock out at the five-hour mark, even though they were still working, and had to take their meal
6 periods at a later time. Other times, Plaintiffs were forced to clock out at the actual times they
7 took their meal periods, after which their supervisors altered their time sheets to prevent one-
8 hour penalties of additional pay as required under California Labor Code § 226.7(b) and IWC
9 Wage Orders.

10 23. Defendant expects employees to claim no overtime or meal or rest period
11 violation premiums without prior approval in an effort to control payroll. Defendant encourages
12 store managers and assistant store managers to remove hours that are associated with overtime
13 and/or meal violation premiums and are not explicitly authorized during any particular week
14 from employee timesheets.

15 24. Defendant knew or should have known that Plaintiffs and Class Members have
16 been forced to miss their duty-free, uninterrupted rest breaks due to the Two-Person Policy.
17 However, Defendant has failed to pay Plaintiffs and Class Members for these rest periods.

18 25. Defendant knew or should have known that Plaintiffs, the Missed or Non-
19 Compliant Meal Period Subclass, and the On-Duty Meal Period Subclass have been forced to
20 miss their duty-free, uninterrupted meal breaks and/or take on-duty meal breaks due to the Two-
21 Person Policy. However, Defendant has failed to pay Plaintiffs, the Missed or Non-Compliant
22 Meal Period Subclass, and the On-Duty Meal Period Subclass Members for these meal periods.

23 26. As a result of Defendant's Two-Person Policy and practice, Defendant has not
24 made available a ten-minute paid rest period to Plaintiffs and Class Members who work more
25 than three and one-half hours in a day. Defendant has also failed to pay Plaintiffs and Class
26 Members premiums in lieu of lawful rest periods.

1 27. As a result of Defendant's Two-Person Policy and practice, Defendant has not
2 provided a thirty-minute, uninterrupted, unpaid meal period to Plaintiffs and Missed Meal
3 Subclass Members who work more than five hours in a day, nor paid premiums for missed,
4 compliant meal periods. Defendant has also failed to pay Plaintiffs and On-Duty Meal Period
5 Subclass Members for their on-duty meal periods.

6 28. Upon information and belief, Defendant has routinely failed to pay rest period
7 premiums for missed or non-compliant rest periods to Plaintiffs and Class Members, as required
8 under California Labor Code §§ 226.7 and 512, and IWC Wage Orders.

9 29. Upon information and belief, Defendant has not paid all meal period premiums
10 for missed or non-compliant meal periods to Plaintiffs and Missed or Non-Compliant Meal
11 Period Subclass Members, as required under California Labor Code §§ 226.7 and 512, and IWC
12 Wage Orders.

13 30. Upon information and belief, Defendant has not paid all meal period premiums
14 for on-duty meal periods to Plaintiffs and On-Duty Meal Period Subclass Members, as required
15 under California Labor Code §§ 226.7 and 512, and IWC Wage Orders.

16 31. As a result of Defendant's Two-Person Policy and corresponding failure to pay
17 meal period premiums, Defendant has willfully and knowingly failed to pay premium overtime
18 compensation to Plaintiffs and similarly-situated Missed or Non-Compliant Meal Period and
19 On-Duty Meal Period Subclass Members for hours worked in excess of eight hours per day, and
20 minimum wages for each hour worked.

21 32. As a result of Defendant's Two-Person Policy and corresponding failure to pay
22 rest premiums, Defendant has failed to itemize the total hours worked, including missed rest
23 periods and premiums owed for such, on wage statements furnished to Plaintiffs and similarly-
24 situated Class Members.

25 33. As a result of Defendant's Two-Person Policy and corresponding failure to pay
26 meal period premiums, Defendant has failed to itemize the total hours worked, including missed
27 and/or on-duty meal periods and premiums owed for such, on wage statements furnished to
28

1 Plaintiffs and similarly-situated Missed or Non-Compliant Meal Period Subclass and On-Duty
2 Meal Period Subclass Members.

3 34. As a result of Defendant's Two-Person Policy, Defendant has willfully and
4 knowingly failed to pay Plaintiff Mario Parra and the Waiting Time Penalties Subclass, upon
5 termination or resignation of employment, all accrued compensation, including missed meal
6 and rest period premium compensation.

7 **V. CLASS ACTION ALLEGATIONS**

8 35. Plaintiffs bring all claims alleged herein under California law as a class action on
9 behalf of all Floor Workers who worked in California during the Class Period. Plaintiffs seek to
10 pursue their claims on behalf of the following class ("Proposed Class"):

11 All Floor Workers employed by Defendant in the State of California within four years
12 prior to the original filing of the Complaint in this action, through its final disposition.

13 36. Plaintiffs seek to pursue claims on behalf of the following defined Missed or
14 Non-Compliant Meal Period Subclass:

15 All Proposed Class Members who are currently employed by Defendant or were
16 employed by Defendant at some point within the past four years preceding the original
17 filing of the Complaint in this action and were forced to miss a meal period within their
18 first five hours of a shift.

19 37. Plaintiffs seek to pursue claims on behalf of the following defined On-Duty Meal
20 Period Subclass:

21 All Proposed Class Members who are currently employed by Defendant or were
22 employed by Defendant at some point within the past four years preceding the original
23 filing of the Complaint in this action and were forced to take an on-duty meal period
24 within their first five hours of a shift.

25 38. Plaintiffs seek to pursue claims on behalf of the following defined Proposed
26 Waiting Time Penalties Subclass:

1 All Proposed Class Members who are no longer employed by Defendant and have not
2 been employed by Defendant for more than 72 hours, within three years prior to this
3 action's original filing date through its final disposition.

4 39. The class claims herein have been brought and may properly be maintained as a
5 class action under California Code of Civil Procedure § 382 because there is a well-defined
6 community of interest among Class Members with respect to the claims asserted herein and the
7 Proposed Class is easily ascertainable.

8 40. Numerosity: The Proposed Class and Subclasses are so numerous that joinder of
9 all members is impracticable. Plaintiffs are informed and believe, and on that basis allege, that
10 during the relevant time period, Defendant has employed a substantial number of individuals
11 who are geographically dispersed and who satisfy the definition of the Class Members and
12 Subclass Members. The name, mailing addresses, email addresses, and phone numbers of the
13 Class Members and all Subclass Members are available to the Defendant. Notice can be
14 provided to Class Members and all Subclass Members via first-class mail, email, and text
15 message using techniques and a form of notice similar to those customarily used in class action
16 lawsuits of this nature.

17 41. Typicality: Plaintiffs' claims are typical of the Class Members and all Subclass
18 Members. Plaintiffs, like other Class Members and Subclass Members, were subjected to
19 Defendant's common, unlawful policies, practices, and procedures primarily relating to
20 Defendant's missed rest break and missed and/or on-duty meal break policies and practices. The
21 claims of Plaintiffs are typical of the claims of the Class Members and Subclass Members who
22 were employed as Floor Workers during the Class Period. Defendant's common course of
23 unlawful conduct has caused Plaintiffs and similarly situated Class Members and Subclass
24 Members to sustain the same or similar injuries and damages caused by the same practices of
25 Defendant. Plaintiffs' claims are thereby representative of and co-extensive with the claims of
26 the Class Members and Subclass Members.

1 42. Adequacy: Plaintiffs are members of the Class and Subclasses; do not have any
2 conflicts of interest with other Class Members and Subclass Member; and will prosecute the
3 case vigorously on behalf of the Class. Plaintiffs will fairly and adequately protect the interests
4 of the Class Members and Subclass Members. Plaintiffs have retained counsel competent and
5 experienced in complex class actions, and California wage and hour employment litigation.

6 43. Commonality: There are questions of law and fact common to Plaintiffs and the
7 Class Members and Subclass Members which predominate over any questions affecting only
8 individual members of the Class. These common questions of law and fact include, without
9 limitation:

10 (a) Whether Defendant maintained a policy or practice of requiring two
11 Floor Workers to remain on the floor at all times and continue working
12 throughout their meal and rest periods;

13 (b) Whether Defendant unlawfully failed to authorize and permit timely, off-
14 duty ten-minute rest periods to Plaintiffs and Class Members in violation of
15 California Labor Code § 226.7, and IWC Wage Orders, and pay premiums when
16 such periods were missed;

17 (c) Whether Defendant's failure to separately compensate Class Members
18 for paid rest periods violates California Labor Code § 226.7, and the IWC Wage
19 Orders;

20 (d) Whether Defendant's failure to authorize and permit Class Members with
21 adequate rest periods constituted an unlawful, unfair, and/or fraudulent business
22 practice under California Business & Professions Code § 17200 *et seq.*;

23 (e) Whether the nature of the On-Duty Meal Period Subclass Members'
24 work prevented these Subclass Members from being relieved of all duty on their
25 meal periods;

26 (f) Whether Defendant unlawfully failed to provide timely, uninterrupted,
27 off-duty thirty-minute meal periods to Plaintiffs, Missed or Non-Compliant Meal
28

1 Period Subclass Members, and On-Duty Meal Period Subclass Members in
2 violation of California Labor Code §§ 226.7, 512, and IWC Wage Orders, and
3 timely pay premiums when such meal periods were missed and/or not granted;

4 (g) Whether Defendant's failure to provide Plaintiffs, Missed or Non-
5 Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass
6 Members with adequate meal periods constituted an unlawful, unfair, and/or
7 fraudulent business practice under California Business & Professions Code §
8 17200 *et seq.*;

9 (h) Whether Defendant's Two-Person Policy caused Plaintiffs, Missed or
10 Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period
11 Subclass Members to work in excess of eight hours per day;

12 (i) Whether Defendant has failed to pay Plaintiffs and On-Duty Meal Period
13 Subclass Members for meal periods during which On-Duty Meal Period
14 Subclass Members were not relieved of all duty;

15 (j) Whether Defendant has failed to pay Missed or Non-Compliant Meal
16 Period Subclass Members and On-Duty Meal Period Subclass Members
17 overtime wages for time worked in excess of eight hours per day;

18 (k) Whether Defendant failed to pay Missed or Non-Compliant Meal Period
19 Subclass Members and On-Duty Meal Period Subclass Members at least the
20 minimum wage rate for each hour worked;

21 (l) Whether Defendant has violated IWC Wage Orders and California Labor
22 Code §§ 510 and 1194 by their failure to pay Missed or Non-Compliant Meal
23 Period Subclass Members and On-Duty Meal Period Subclass Members
24 overtime and minimum wage compensation;

25 (m) Whether Defendant's failure to pay overtime and minimum wage
26 compensation to Missed or Non-Compliant Meal Period Subclass Members and
27 On-Duty Meal Period Subclass Members constitutes an unlawful, unfair, and/or
28

1 fraudulent business practice under California Business & Professions Code
2 § 17200 *et seq.*;

3 (n) Whether Defendant has knowingly and intentionally failed to provide
4 Class Members and all Subclass Members with an itemized statement showing
5 total hours worked with each payment of wages, as required by California Labor
6 Code § 226 and IWC Wage Orders;

7 (o) Whether Defendant has violated California Labor Code § 1174 and IWC
8 Wage Orders by failing to maintain documentation of the actual hours worked
9 each day by Class Members and all Subclass Members;

10 (p) Whether Defendant's failure to maintain documentation of the actual
11 hours worked each day by Class Members and all Subclass Members constitutes
12 an unlawful, unfair, and/or fraudulent business practice under California
13 Business & Professions Code § 17200 *et seq.*;

14 (q) Whether Defendant has violated Labor Code §§ 201-203 by
15 failing, upon termination, to timely pay Waiting Time Penalties Subclass
16 Members wages that were due and missed rest and meal premiums;

17 (r) Whether Defendant's failure to pay all compensation owed to Waiting
18 Time Penalties Subclass Members at time of termination of employment
19 constitutes an unlawful, unfair, and/or fraudulent business practice under
20 Business & Professions Code § 17200 *et seq.*

21 (s) Whether Defendant's actions were willful;

22 (t) The proper formula for calculating restitution, damages, and waiting time
23 and other statutory penalties owed to Plaintiffs and the Class alleged herein.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PROVIDE REST PERIODS**

26 **(California Labor Code §§ 226.7 and 512; California IWC Wage Orders)**

1 44. Plaintiffs incorporate by reference in this cause of action each allegation of the
2 preceding paragraphs as though fully set forth herein.

3 45. Plaintiffs and Class Members regularly missed their rest periods due to
4 Defendant's Two-Person Policy but were not compensated for their time, as required by IWC
5 Wage Order 7.

6 46. Plaintiffs and Class Members regularly worked more than three and one-half
7 hours in a day without being authorized and permitted to take a duty-free, 10-minute rest
8 period, as required under California Labor Code § 226.7 and IWC Wage Orders.

9 47. Because Defendant impeded Plaintiffs and Class Members in taking duty-free
10 rest periods, Defendant failed to afford proper rest periods to Plaintiffs and Class Members. As
11 a result, Defendant is liable to Plaintiffs and Class Members for one hour of additional pay at
12 the regular rate of compensation for each workday that the proper rest periods were not
13 provided, pursuant to California Labor Code § 226.7(b) and IWC Wage Orders.

14 48. Defendant's failure to pay rest period premiums was done willfully, in bad faith,
15 in knowing violation of the California Labor Code and the IWC Wage Order.

16 49. By violating California Labor Code §§ 226.7 and 512, and IWC Wage Orders,
17 Defendant is also liable for reasonable attorneys' fees and costs for enforcing the public interest
18 underpinning the aforementioned Labor Code provisions, under California Code of Civil
19 Procedure § 1021.5.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 **(California Labor Code §§ 226.7 and 512; California IWC Wage Orders)**

23 50. Plaintiffs incorporate by reference in this cause of action each allegation of the
24 preceding paragraphs as though fully set forth herein.

25 51. The nature of the work performed by Plaintiffs and On-Duty Meal Period
26 Subclass Members as Floor Workers did not prevent them from being relieved of all duty on
27 their meal periods.

1 52. Plaintiffs and Missed or Non-Compliant Meal Period Subclass Members
2 regularly missed their meal periods or had their meal periods interrupted or not free from all
3 duty, due to Defendant's Two-Person Policy, but were not compensated for their time, as
4 required by IWC Wage Order 7.

5 53. Plaintiffs and On-Duty Meal Period Subclass Members regularly remained on-
6 duty and (*inter alia*) at work throughout their meal periods due to Defendant's Two-Person
7 Policy, but were not compensated for their time, as required by IWC Wage Order 7.

8 54. Plaintiffs and Missed or Non-Compliant Meal Period Subclass and On-Duty
9 Meal Period Subclass Members regularly worked more than five hours a day without being
10 afforded at least a half-hour uninterrupted meal period in which they were relieved of all duties,
11 as required by California Labor Code §§ 226.7 and 512, and IWC Wage Orders.

12 55. Because Defendant required Plaintiffs, Missed or Non-Compliant Meal Period
13 Subclass Members, and On-Duty Meal Period Subclass Members to either miss, be interrupted,
14 or remain on-duty during their meal periods, Defendant failed to afford proper meal periods to
15 Plaintiffs and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal Period
16 Subclass Members. As a result, Defendant is liable to Plaintiffs and Missed or Non-Compliant
17 Meal Period Subclass and On-Duty Meal Period Subclass Members for one hour of additional
18 pay at the regular rate of compensation for each workday that the proper meal periods were not
19 provided, pursuant to California Labor Code § 226.7(b) and IWC Wage Orders.

20 56. Defendant's failure to pay meal period premiums was done willfully, in bad
21 faith, in knowing violation of the California Labor Code and the IWC Wage Order.

22 57. By violating California Labor Code §§ 226.7 and 512, and IWC Wage Orders,
23 Defendant is also liable for reasonable attorneys' fees and costs for enforcing the public interest
24 underpinning the aforementioned Labor Code provisions, under California Code of Civil
25 Procedure § 1021.5.

26 **THIRD CAUSE OF ACTION**

27 **FAILURE TO PAY OVERTIME COMPENSATION**

(California Labor Code §§ 510, 558, 1194 et seq., 1197.1, 1198; California IWC Wage Orders)

58. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

59. Plaintiffs, Missed or Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass Members regularly remained on-duty and (*inter alia*) at work throughout their meal periods due to Defendant's Two-Person Policy, but were required to miss their meal periods entirely or clock out while still on-duty and were not compensated for their time worked, as required by IWC Wage Order 7.

60. Plaintiffs, Missed or Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass Members regularly worked over eight hours a day due to their missed and/or on-duty meal periods, but were not paid additional overtime due to meal period time worked.

61. By failing to pay all required overtime compensation to Plaintiffs, Missed or Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass Members, where such on-duty, off-the-clock meal periods caused Plaintiffs and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal Period Subclass Members to work over eight hours a day, Defendant has violated California Labor Code §§ 510 and 1194, and IWC Wage Orders, which require overtime compensation for non-exempt employees who work over eight hours a day.

62. As a result of Defendant's unlawful acts; Plaintiffs and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal Period Subclass Members have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under California Labor Code § 1194.

63. By violating California Labor Code §§ 510 and 1194, Defendant are liable for attorneys' fees and costs under California Labor Code §§ 218.5, 1194, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE

(California Labor Code §§ 1194, 1194.2, 1197, 1197.1; California IWC Wage Order 7-2001)

64. Plaintiffs incorporate by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

65. Defendant required Plaintiffs, Missed or Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass Members to either miss their meal periods entirely and/or work during their meal periods but clock out during those periods. As a result, Defendant required Plaintiffs, Missed or Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass Members to work lunch periods without compensating Plaintiffs and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal Period Subclass Members for the same.

66. Defendant failed to pay Missed or Non-Compliant Meal Period Subclass Members and On-Duty Meal Period Subclass Members at least the minimum wage rate for each hour worked.

67. By failing to pay minimum wage compensation to Plaintiffs, Missed or Non-Compliant Meal Period Subclass Members, and On-Duty Meal Period Subclass Members, Defendant have violated California Labor Code §§ 1194, 1197, 1197.1 and IWC Wage Order 7-2001, which require minimum wage compensation for non-exempt employees.

68. As a result of Defendant's unlawful acts, Plaintiffs and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal Period Subclass Members have been deprived of minimum wage compensation in an amount to be determined at trial, and are

1 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under
2 California Labor Code § 1194.

3 69. 13. In addition, under Labor Code § 1194.2, Plaintiffs and Missed or Non-
4 Compliant Meal Period Subclass and On-Duty Meal Period Subclass Members are entitled to
5 recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and
6 interest thereon.

7 **FIFTH CAUSE OF ACTION**

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

9 **(California Labor Code §§ 226 and 1174)**

10 70. Plaintiffs incorporate by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 71. California Labor Code § 226(a) and IWC Wage Orders require employers semi-
13 monthly or at the time of each payment of wages to furnish each California employee with a
14 statement itemizing, among other things, the gross wages earned and total hours worked by the
15 employee, including premiums owed for rest and meal break violations. California Labor Code
16 § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement
17 itemizing, among other things, the gross wages earned and total hours worked by the employee,
18 then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50)
19 for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four
20 thousand dollars (\$4,000).

21 72. Due to Defendant's Two-Person Policy and the subsequent missed rest and meal
22 breaks and/or on-duty meal periods, Defendant knowingly and intentionally failed to furnish
23 Plaintiffs and all Class and Subclass Members with timely, itemized statements showing the
24 gross wages earned and total hours worked, including premiums owed for rest and meal break
25 violations, as required by California Labor Code § 226(a) and IWC Wage Orders. As a result,
26 Defendant is liable to Plaintiffs and all Class and Subclass Members for the amounts provided
27 by California Labor Code § 226(b).

1 73. Defendant violated California Labor Code § 1174 and IWC Wage Orders by
2 willfully failing to keep required payroll records showing the actual hours worked each day by
3 Plaintiffs and all Class and Subclass Members. As a direct and proximate result of Defendant's
4 failure to maintain payroll records, Plaintiffs and all Class and Subclass Members have suffered
5 actual harm as they have been precluded from accurately monitoring the number of hours
6 worked and thus seeking all accrued unpaid wages.

7 74. Plaintiffs, on behalf of themselves and similarly situated Class and Subclass
8 Members, request relief for the amounts provided by California Labor Code § 226(b).

9 75. By violating California Labor Code §§ 226 and 1174, and IWC Wage Orders,
10 Defendant is also liable for reasonable attorneys' fees and costs pursuant to Labor Code
11 § 226(e) and for enforcing the public interest underpinning the aforementioned Labor Code
12 provisions, under California Code of Civil Procedure § 1021.5.

13 **SIXTH CAUSE OF ACTION**

14 **LATE PAY AND WAITING TIME PENALTIES**

15 **(as to Plaintiff Parra and the Waiting Time Penalties Subclass)**

16 **(California Labor Code § 203)**

17 76. Plaintiff Parra incorporates by reference in this cause of action each allegation of
18 the preceding paragraphs as though fully set forth herein.

19 77. California Labor Code §§ 201 and 202 require an employer to pay its employees
20 all wages due within the time specified by law. Labor Code § 203 provides that if an employer
21 willfully fails to pay such wages, the employer must continue to pay the subject employees'
22 wages until the back wages are paid in full or an action is commenced, up to a maximum of
23 thirty days of wages.

24 78. Plaintiff Parra and Waiting Time Penalties Subclass Members who ceased
25 employment with Defendant BevMo! are entitled to unpaid compensation, but to date have not
26 received such compensation, more than 72 hours after the cessation of their employment.

1 79. Defendant failed to pay the earned and unpaid wages of Plaintiff Parra and
2 Waiting Time Penalties Subclass Members within 30 days from the time such wages should
3 have been paid under Labor Code §§ 201 and 202.

4 80. Defendant willfully failed to timely compensate Plaintiff Parra and Waiting
5 Time Penalties Subclass Members for all hours worked. As a result, Defendant is liable to
6 Plaintiff Parra and Waiting Time Penalties Subclass Members whose employment ended during
7 the Class Period for waiting time penalties, together with reasonable attorneys' fees and costs,
8 under California Labor Code § 203 and related sections.

9 **SEVENTH CAUSE OF ACTION**

10 **VIOLATIONS OF THE UNFAIR COMPETITION LAW ("UCL")**

11 **(California Business & Professions Code §§ 17200-17209)**

12 81. Plaintiffs incorporate by reference in this cause of action each allegation of the
13 preceding paragraphs as though fully set forth herein.

14 82. Defendant improperly, fraudulently, and unlawfully required Class Members to
15 miss rest periods and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal
16 Period Subclass Members to miss and/or take on-duty meal periods and have thereby
17 committed unlawful, unfair and/or fraudulent business acts and practices as defined by
18 California Business & Professions Code § 17200, by engaging in the following:

- 19 i. failing to pay Plaintiffs and Class Members their premium wages earned
20 while working without the legally mandated rest periods;
21 ii. failing to pay Plaintiffs and Missed or Non-Compliant Meal Period
22 Subclass and On-Duty Meal Period Subclass Members their premium
23 wages earned while working without the legally mandated meal periods;
24 iii. failure to pay overtime and minimum wage compensation to Plaintiffs
25 and Missed or Non-Compliant Meal Period Subclass and On-Duty Meal
26 Period Subclass Members;

- iv. failure to provide accurate itemized wage statements to Plaintiffs and all Class and Subclass Members;
- v. failing to maintain accurate payroll records showing the actual hours worked each day by Plaintiffs and all Class and Subclass Members; and
- vi. failing to pay all owed overtime and unpaid meal/rest period compensation to Plaintiff Parra and the Waiting Time Penalties Subclass upon termination of their employment.

83. Plaintiffs and Class and Subclass Members lost money and property as a result of Defendant's unlawful business practices described above.

84. Pursuant to the UCL, Plaintiffs and all Class and Subclass Members are entitled to restitution of money or property acquired by Defendant by means of such unlawful business practices, in amounts not yet known, but to be ascertained at trial.

85. Pursuant to the UCL, Plaintiffs and Class and Subclass Members are entitled to injunctive relief against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining Defendant from engaging in the unlawful business practices described above, Plaintiffs, Class Members, Subclass Members, and the general public will be irreparably injured.

86. Plaintiffs and Class and Subclass Members have no plain, speedy, and adequate remedy at law. Defendant, if not enjoined by this Court, will continue to engage in the unlawful business practices described above in violation of the UCL, in derogation of the rights of Plaintiffs and Class Members and of the general public.

87. Plaintiffs and Class and Subclass Members' success in this action will result in the enforcement of important rights affecting the public interest by conferring a significant benefit upon the general public.

88. Defendant's numerous violations of local and California law, as well as the other statutory and regulatory violations alleged herein, constitute unlawful business actions and practices in violation of Business and Professions Code § 17200, *et seq.*

1 89. Pursuant to Business and Professions Code § 17200, *et seq.*, Plaintiffs and the
2 Class and Subclass Members are entitled to restitution for all unpaid business expenses,
3 overtime, unpaid minimum wages, rest/meal period compensation, and interest that were
4 withheld and retained by Defendant during a period that commences four years prior to the
5 filing of this action and a declaration that Defendant's business practices are unfair within the
6 meaning of the statute, in addition to an award of attorneys' fees and costs pursuant to Code of
7 Civil Procedure § 1021.5 and other applicable law, and costs.

8 **PRAYER FOR RELIEF**

9 90. WHEREFORE, Plaintiffs, on behalf of themselves and the Proposed Class and
10 Subclasses, request judgment and the following specific relief against Defendant as follows:

11 A. That the Court determine that this action may be maintained as a class
12 action under Code of Civil Procedure § 382;

13 B. A declaratory judgment that Defendant has knowingly and intentionally
14 violated the following provisions of the Labor Code and IWC Wage Order 7-2001 as to
15 Plaintiffs and Class and Subclass Members:

16 i. California Labor Code §§ 226.7, 512, and IWC Wage Orders by
17 failing to provide 10-minute, paid, duty-free rest periods to
18 Plaintiffs and Class Members and 30-minute unpaid, duty-free
19 meal periods to Plaintiffs and Missed or Non-Compliant Meal
20 Period Subclass and On-Duty Meal Period Subclass Members;

21 ii. California Labor Code §§ 510, 558, 1194 *et seq.*, 1197.1, 1198
22 and IWC Wage Orders by failing to pay overtime and minimum
23 wage compensation to Missed or Non-Compliant Meal Period
24 Subclass and On-Duty Meal Period Subclass Members with
25 liquidated damages for minimum wage violations;

26 iii. California Labor Code §§ 226 and 1174 and IWC Wage Orders,
27 by failing to provide Class Members and all Subclass Members
28 with itemized statements of total hours worked with each

1 payment of wages and failing to maintain payroll records of the
2 actual hours worked by Class Members and all Subclass
3 Members;

4 iv. California Labor Code §§ 201-203, for willful failure to pay
5 minimum wage, overtime, and meal/rest period compensation at
6 the time of termination of employment, resulting in unpaid
7 waiting time penalties;

8 v. California Business & Professions Code §§ 17200-17209, by
9 failing to provide rest periods and/or pay rest period
10 compensation to all Class Members, by failing to provide meal
11 periods and/or meal period compensation to Missed or Non-
12 Compliant Meal Period Subclass and On-Duty Meal Period
13 Subclass Members, by failing to pay Missed or Non-Compliant
14 Meal Period Subclass and On-Duty Meal Period Subclass
15 Members minimum wage and overtime compensation, by failing
16 to provide Class Members and all Subclass Members with
17 itemized wage statements showing all hours worked, by failing to
18 maintain payroll records that document all hours worked by Class
19 Members and all Subclass Members, and by willfully failing to
20 pay all compensation owed to Waiting Time Penalties Subclass
21 Members upon termination of employment;

22 C. That Defendant's actions are found to be willful and/or in bad faith to the
23 extent necessary under §§ 201, 202 and 203 of the California Labor Code for willful failure to
24 pay all compensation owed at the time of separation to Plaintiff Parra and the Waiting Time
25 Penalties Subclass Members, as to § 226 of the California Labor Code for willful failure to
26 provide the required accurate and itemized wage statements to Plaintiffs and all Class and
27 Subclass Members;

1 D. An award to Plaintiffs and Class and Subclass Members of damages in
2 the amount of overtime, minimum wage, and rest/meal period compensation, including interest
3 thereon, subject to proof at trial;

4 E. An award to Plaintiffs and all Class and Subclass Members of statutory
5 penalties because of Defendant's failure to provide Plaintiffs and all Class and Subclass
6 Members with itemized wage statements that comply with the requirements of California Labor
7 Code § 226, subject to proof at trial;

8 F. An award of statutory penalties due to them as waiting time penalties as
9 to the Waiting Time Penalties Subclass Members, pursuant to Labor Code § 203;

10 G. That Defendant be ordered to pay restitution to Plaintiffs and Class and
11 Subclass Members for amounts acquired through Defendant's unlawful activities pursuant to
12 Business and Professions Code §§ 17200-05 and enjoined to cease and desist from unlawful and
13 unfair activities in violation of California Business and Professions Code § 17200 *et. seq.*;

14 H. That the Court issue declaratory relief that Defendant's challenged
15 policies are unlawful;

16 I. An award to Plaintiffs and the Class and Subclass Members of reasonable
17 attorneys' fees and costs, pursuant to California Code of Civil Procedure § 1021.5 and
18 California Labor Code §§ 226, 218.5, 1194, and/or other applicable law; and

19 J. An award to Plaintiffs and Class and Subclass Members of such other
20 and further relief, in law or equity, as this Court deems appropriate and just.

21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs hereby demands a jury trial on all issues.

24
25 Dated: July 21, 2020

Respectfully submitted,

26 BRYAN SCHWARTZ LAW
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: /s/ Bryan Schwartz
Bryan Schwartz
Ryan Chin
ATTORNEYS FOR PLAINTIFFS AND
THE PUTATIVE CLASS