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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/26/2021
Clerk of the Court
BY: KALENE APOLONIO
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DANIEL BARTON; LUIS DE LA
TORRE; NENAD NINO JOVICIC;
MELVIN PICOLO; GREGORY PETRI;
MARK MARCO CANDELA; SPIRO
GEORGOPOLOUS; MARILYN
KITAGAWA; LUCA ORTOLANI; RUY
CAMPOSECO

Plaintiffs,

v.

NORTH BEACH RESTAURANT, INC.;
NORIS ORSI; STEPHEN DAVID
MAYER; AND DOES 1 TO 100,

Defendants.

Case No. **CGC-21-590019**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

1. FAILURE TO PAY OVERTIME WAGES;
2. LIQUIDATED DAMAGES UNDER LABOR
CODE §1194.2;
3. FAILURE TO PAY SPLIT SHIFT WAGES;
4. FAILURE TO PROVIDE MEAL PERIODS
5. FAILURE TO PROVIDE REST BREAKS
6. CONVERSION;
7. FAILURE TO PAY WAGES UNDER LABOR
CODE §210
8. FAILURE TO PROVIDE PROPER ITEMIZED
WAGE STATEMENTS;
9. WAITING TIME PENALTIES;
10. UNLAWFUL BUSINESS PRACTICES IN
VIOLATION BUS. AND PROF. CODE
§17200;
11. PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

1 Plaintiffs allege:

2 **PARTIES AND COMMON ALLEGATIONS**

3 1. Plaintiffs are each adult individuals.

4 2. Defendants NORIS ORSI and STEPHEN DAVID MAYER are each adult individuals.

5 3. Plaintiffs are informed and believe and thereon allege that defendant NORTH BEACH
6 RESTAURANT, INC. was and is a corporation registered to transact business in California.

7 4. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1
8 to 100, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend
9 this complaint to allege their true names and capacities when ascertained. Plaintiffs are informed
10 and believe and thereon allege that each of these fictitiously named defendants is responsible in
11 some manner for the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were
12 proximately caused by the aforementioned defendants.

13 5. Plaintiffs are informed and believe and thereon allege that defendants NORIS ORSI,
14 STEPHEN DAVID MAYER, and DOES 1 to 100 are owners, directors, officers and/or managing
15 agents of defendant NORTH BEACH RESTAURANT, INC.

16 6. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned
17 defendants were employers within the meaning of wage and hour laws including but not limited to
18 California Labor Code §§558.1, 1194 and Wage Orders of the Industrial Welfare Commission and
19 codified in the applicable regulations.

20 7. Plaintiffs are informed and believe and thereon allege that they were employed by defendants
21 NORTH BEACH RESTAURANT, INC.; NORIS ORSI, STEPHEN DAVID MAYER, and DOES 1
22 to 100 as restaurant workers, servers and/or bartenders in the City of San Francisco, County of San
23 Francisco.

24 8. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned each
25 of the defendants was the agent, employee, partner and/or representative of each of the remaining
26 defendants and, in doing the things hereinafter alleged, was acting within the course and scope of
27 such agency and employment. Plaintiffs is further informed and believes, and thereon alleges, that

1 each of the defendants herein gave consent to, ratified, and authorized the acts alleged herein to each
2 of the remaining defendants.

3 9. Plaintiffs are informed and believe and thereon allege that if defendants DOES 1 to 100 were
4 not agents, employees, partners, and/or representatives acting within the course of their relationship
5 with the named defendants, said defendants DOES 1 to 100 were acting in their independent
6 capacity as individual defendants.

7 10. At all times relevant, Defendants Does 1 to 50, controlled, managed and manipulated the
8 affairs of Defendants NORTH BEACH RESTAURANT, INC., and/or DOES 51 to 100 for their
9 own financial advantage and to the financial detriment of Plaintiffs. They willfully and fraudulently
10 and regularly violated the laws, regulations and orders governing wages, hours and working
11 conditions of Plaintiffs and all employees similarly situated such that it became the policy, custom
12 and practice of NORTH BEACH RESTAURANT, INC. and/or Does 51 to 100. They failed to: 1)
13 pay proper overtime, minimum and split shift wages; 2) provide meal and rest breaks; 3) record,
14 maintain and provide true and accurate employee time and pay records; 4) provide true and proper
15 itemized wage statements; and/or 5) pay wages in a timely manner, including upon termination of
16 employment.

17 11. Based upon their dealings, there existed a unity of interest and ownership between NORTH
18 BEACH RESTAURANT, INC. and/or Does 51 to 100 and Does 1 to 50, such that the individuality
19 or separateness of the corporation / entities and these persons did not in reality exist. The Court
20 should pierce the corporate veil because NORTH BEACH RESTAURANT, INC. and/or Does 51 to
21 100 was and is the alter ego of Does 1 to 50.

22 12. Under the particular circumstances, recognition of NORTH BEACH RESTAURANT, INC.
23 and/or Does 51 to 100 as legal entities, separate and distinct from Does 1 to 50, with separate and
24 distinct liabilities and obligations, would permit the corporate form or other entity form to be used
25 by Does 1 to 50 to promote fraud and injustice, and to avoid personal liability to Plaintiffs and all
26 similarly situated and aggrieved employees for intentional and fraudulent violations of California
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1 wage and hour laws.

2 13. To prevent fraud, injustice and abuse of the corporate privilege in this particular action,
3 Plaintiffs seek a finding that NORTH BEACH RESTAURANT, INC. and/or DOES 51 to 100 are,
4 and at all times relevant was the alter ego of DOES 1 to 50, that the corporate or other entity identity
5 of NORTH BEACH RESTAURANT, INC. and/or DOES 51 to 100 should be disregarded, and that
6 DOES 1 to 50 should be held personally liable to Plaintiffs for the acts and liabilities of their
7 company and other entities that employed Plaintiffs.

8 **FIRST CAUSE OF ACTION**

9 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR FAILURE TO PAY OVERTIME**
10 **WAGES**

11 14. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-13
12 of this complaint.

13 15. On or about July 27, 2019, Plaintiffs filed claims with the Division of Labor Standards
14 Enforcement (“DLSE claims”) alleging the claims set forth in this Complaint.

15 16. Labor Code §1194(a) states, “Notwithstanding any agreement to work for a lesser wage, any
16 employee receiving less than the legal minimum wage or the legal overtime compensation applicable
17 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
18 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and
19 costs of suit.”

20 17. Labor Code §1197, “The minimum wage for employees fixed by the commission or by any
21 applicable state or local law, is the minimum wage to be paid to employees, and the payment of a
22 lower wage than the minimum so fixed is unlawful. This section does not change the applicability of
23 local minimum wage laws to any entity.”

24 18. Labor Code §1198 provides that the employment of any employee for longer hours than
25 those fixed by the applicable wage order or under conditions of labor prohibited by the wage order is
26 unlawful.

1 19. Industrial Welfare Commission Wage Order No. 5-2001, which regulates the wages, hours
2 and working conditions of employees working in the “Public Housekeeping Industry,” was
3 applicable to and controlled Plaintiffs’ employment with defendants. Wage Order 5-2001 is codified
4 in Title 8, §11050 of the California Code of Regulations.

5 20. Labor Code §510 and §3(A) of Wage Order No. 5-2001 provides in pertinent part that any
6 employee who works more than 8 and up to 12 hours in one workday, and more than 40 hours in one
7 workweek, and who works the first 8 hours on the seventh consecutive day of work in a workweek,
8 shall be paid one and one-half (1 ½) times the employee’s regular rate of pay. In addition, any
9 employee who works more than 12 hours in one workday, and who works more than 8 hours on any
10 seventh day consecutive day of work in a workweek shall be compensated at the rate of no less than
11 twice the employee’s regular rate of pay.

12 21. Labor Code §206.5 states, “(a) An employer shall not require the execution of a release of a
13 claim or right on account of wages due, or to become due, or made as an advance on wages to be
14 earned, unless payment of those wages has been made. A release required or executed in violation of
15 the provisions of this section shall be null and void as between the employer and the employee.
16 Violation of this section by the employer is a misdemeanor. (b) For purposes of this section,
17 execution of a release includes requiring an employee, as a condition of being paid, to execute a
18 statement of the hours he or she worked during a pay period which the employer knows to be false.”

19 22. Defendants failed to pay Plaintiffs overtime premium during the claim period when Plaintiffs
20 worked over 8 hours per day or over 40 hours per week.

21 23. Pursuant to Labor Code §§1194(a), 1194.2(a) and Civil Code §§3287(a) and 3289(b), and for
22 the four year period immediately preceding the filing of their DLSE claims, Plaintiffs request
23 interest at the legal rate of 10 percent per annum on all unpaid wages from the date such wages were
24 due until payment.

25 24. Plaintiffs have incurred and will continue to incur expenses for attorney’s fees and costs in
26 prosecuting this action. Pursuant to Labor Code §1194(a), Plaintiffs request an award of reasonable
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1 attorney's fees and costs.

2 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

3 **SECOND CAUSE OF ACTION**

4 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR LIQUIDATED DAMAGES UNDER**
5 **LABOR CODE §1194.2**

6 25. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-24
7 of this complaint.

8 26. Labor Code §1197.1 provides, "(a) Any employer or other person acting either individually
9 or as an officer, agent, or employee of another person, who pays or causes to be paid to any
10 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of
11 the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable
12 to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For
13 any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid
14 employee for each pay period for which the employee is underpaid. This amount shall be in addition
15 to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2,
16 and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for
17 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
18 pay period for which the employee is underpaid regardless of whether the initial violation is
19 intentionally committed. This amount shall be in addition to an amount sufficient to recover
20 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
21 imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties
22 imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected
23 employee."

24 27. Labor Code §1194.2(a) provides, "In any action under Section 98, 1193.6, 1194, or 1197.1 to
25 recover wages because of the payment of a wage less than the minimum wage fixed by an order of
26 the commission or by statute, an employee shall be entitled to recover liquidated damages in an
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1 amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall
2 be construed to authorize the recovery of liquidated damages for failure to pay overtime
3 compensation.”

4 28. Plaintiffs were not compensated for any hours worked over eight hours per day or over forty
5 hours per week. Plaintiffs are therefore owed liquidated damages in an amount according to proof
6 plus interest thereon.

7 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

8 **THIRD CAUSE OF ACTION**

9 **BY PLAINTIFFS BARTON, GEORGOPOLOUS, ORTOLANI, PICOLO, AND JOVICIC**
10 **AGAINST ALL DEFENDANTS FOR FAILURE TO PAY SPLIT SHIFT WAGES**

11 29. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-28
12 of this complaint.

13 30. Section 4(C) of Wage Order No. 5-2001 provides, “When an employee works a split shift,
14 one hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that
15 workday, except when the employee resides at the place of employment.”

16 31. Plaintiffs performed work during split shifts for which they were not paid one hour’s pay at
17 the minimum wage. Plaintiffs are therefore owed split shift wages in an amount according to proof
18 plus interest thereon.

19 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

20 **FOURTH CAUSE OF ACTION**

21 **BY PLAINTIFFS AGAINST ALL DEFENDANTS**
22 **FOR FAILURE TO PROVIDE MEAL PERIODS**

23 32. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-31
24 of this complaint.

25 33. Labor Code §226.7 provides, “(a) No employer shall require any employee to work during
26 any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. (b)
27 If an employer fails to provide an employee a meal period or rest period in accordance with an

1 applicable order of the Industrial Welfare Commission, the employer shall pay the employee one
2 additional hour of pay at the employee's regular rate of compensation for each work day that the
3 meal or rest period is not provided." Section 11 of Wage Order No. 5-2001 states, "If an employer
4 fails to provide an employee a meal period in accordance with the applicable provisions of this
5 Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
6 compensation for each work day that the meal period is not provided."

7 34. Labor Code §512(a) and Section 11 of Wage Order No. 5-2001, make it unlawful for an
8 employer to employ an employee for a work period of more than five hours per day without
9 providing the employee with a meal period of not less than 30 minutes. Section 512(a) makes it
10 further unlawful for an employer to employ an employee for a work period of more than 10 hours
11 per day without providing the employee with a second meal period of not less than 30 minutes,
12 unless the total hours worked is no more than 12 hours, in which case the second meal period may be
13 waived, but only by mutual consent of the employer and the employee and only if the first meal
14 period was not waived.

15 35. Defendants failed to provide to Plaintiffs during the relevant claim period and in violation of
16 Labor Code §§226.7 and 512 and the applicable wage order, uninterrupted meal periods when
17 Plaintiffs were relieved of all duties.

18 36. Defendants are liable to Plaintiffs for the meal period premiums in an amount according to
19 proof.

20 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

21 **FIFTH CAUSE OF ACTION**

22 **BY PLAINTIFFS AGAINST ALL DEFENDANTS**

23 **FOR FAILURE TO PROVIDE REST PERIODS**

24 37. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-36
25 of this complaint.

26 38. Section 11 of Wage Order No. 5-2001 states, "(A) Every employer shall authorize and permit
27 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
28

1 39. period. The authorized rest period time shall be based on the total hours worked daily at the
2 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest
3 period need not be authorized for employees whose total daily work time is less than three and one-
4 half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which there
5 shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this Order, the employer shall pay the employee one (1)
7 hour of pay at the employee's regular rate of compensation for each work day that the rest period is
8 not provided."

9 40. Defendants failed to provide to Plaintiffs during the relevant claim period and in violation of
10 Labor Code §§226.7 and the applicable wage order, uninterrupted rest periods when Plaintiffs were
11 relieved of all duties.

12 41. Defendants are liable to Plaintiffs for the rest period premiums in an amount according to
13 proof.

14 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

15 **SIXTH CAUSE OF ACTION**
16 **BY PLAINTIFFS AGAINST ALL DEFENDANTS**
17 **FOR CONVERSION**

18 42. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-13
19 of this complaint.

20 43. During the statutory period, customers of the restaurant customarily left tips for Plaintiffs.

21 44. Defendants or their agents substantially interfered with Plaintiffs' tips by knowingly or
22 intentionally, collecting, taking and receiving without Plaintiffs' consent at least ten percent of tips
23 left for Plaintiffs.

24 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

25 **SEVENTH CAUSE OF ACTION**
26 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR FAILURE TO PAY WAGES**
27 **UNDER LABOR CODE §210**

1 45. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-45
2 of this complaint.

3 46. Section 210 of the Labor Code states, "In addition to, and entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
6 shall be subject to a penalty as follows. (1) For any initial violation, one hundred dollars (\$100) for
7 each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
8 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
9 amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory
10 penalty pursuant to Section 98 or by the Labor Commissioner as a civil penalty through the issuance
11 of a citation or pursuant to Section 98.3. The procedures for issuing, contesting, and enforcing
12 judgments for citations issued by the Labor Commissioner under this section shall be the same as
13 those set forth in subdivisions (b) through (k), inclusive, of Section 1197.1."

14 47. Plaintiffs are informed and believe and thereon allege that this is not Defendants initial
15 violation.

16 48. Plaintiffs were paid weekly. Defendants failed to pay Plaintiffs all of their wages due in
17 violation of Labor Code §210.

18 49. Defendants are liable to Plaintiffs for the statutory penalty in an amount according to proof.

19 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

20 **EIGHTH CAUSE OF ACTION**

21 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR FAILURE TO PROVIDE PROPER**
22 **ITEMIZED WAGE STATEMENTS**

23 50. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-49
24 of this complaint.

25 51. Throughout their employment relationship, and in violation of Labor Code §226(a),
26 defendants failed to provide Plaintiffs with accurate and itemized written statements showing the
27 following: gross and net wages earned; total hours worked; all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each rate; the inclusive
2 dates of the period for which the employee is paid; and all deductions. These itemized wage
3 statements are required to be kept on file by the employer for at least three years at the place of
4 employment.

5 52. As a result of defendants' failure to provide the required wage statements, Plaintiffs are
6 deemed to have suffered injury pursuant to Labor Code §226(e).

7 53. Pursuant to Labor Code §226(e)(1), An employee suffering injury as a result of a knowing
8 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the
9 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
11 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
12 costs and reasonable attorney's fees.

13 54. Plaintiffs were paid weekly and are therefore entitled to additional Labor Code §226
14 damages in the amount according to proof.

15 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

16 **NINTH CAUSE OF ACTION**

17 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR WAITING TIME PENALTIES**

18 55. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-54
19 of this complaint.

20 56. Labor Code §203 provides, "If an employer willfully fails to pay, without abatement or
21 reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an
22 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
23 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
24 wages shall not continue for more than 30 days. An employee who secretes or absents himself or
25 herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to
26 him or her, including any penalty then accrued under this section, is not entitled to any benefit under
27 this section for the time during which he or she so avoids payment."

1 57. Defendants failed to pay Plaintiffs' wages as set forth above. Plaintiffs are therefore entitled
2 to waiting time penalties under Labor Code §203 in the amount according to proof.

3 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

4 **TENTH CAUSE OF ACTION**

5 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR UNLAWFUL BUSINESS**

6 **PRACTICES**

7 58. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-57
8 of this complaint.

9 59. Such actions are unfair, unlawful or fraudulent in violation of California Business and
10 Professions Code §17200 et al.

11 60. Plaintiffs seeks full restitution of monies according to proof, to restore any and all monies
12 withheld, acquired and/or converted by the defendants by means of the unfair practices complained
13 of herein, and other injunctive and other relief allowed by law.

14 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

15 **ELEVENTH CAUSE OF ACTION**

16 **BY PLAINTIFFS AGAINST ALL DEFENDANTS FOR PRIVATE ATTORNEYS**

17 **GENERAL ACT PENALTIES**

18 61. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-60
19 of this complaint.

20 62. Under the Private Attorneys General Act of 2006, Labor Code §§ 2698-2699.5, an aggrieved
21 employee, on behalf of himself or herself and other current or former employees, may recover
22 penalties under any provision of the Labor Code that provides for civil penalties. These penalties are
23 in addition to any other relief available under the Labor Code.

24 63. California Labor Code §226.3 provides, "Any employer who violates subdivision (a) of
25 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
26 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
27 violation in a subsequent citation, for which the employer fails to provide the employee a wage

deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

64. As set forth above, Defendants have committed numerous violations for which the Labor Code provides for penalties, including violations of §§206.5, 226, 226.8, 510, 1174, 1194, 1197, 1197.1 and 1198.

65. On or about September 28, 2020, Plaintiff Barton provided written notice by online filing to the Labor & Workforce Redevelopment Agency ("LWDA") and to defendants by certified mail of the legal claims and theories of this case. A true and correct copy of the notice is hereto attached as Exhibit A.

66. Plaintiff has not received notice from LWDA within 65 calendar days of the postmark date of Plaintiff's September 28, 2020 notice.

67. As a direct result of Defendants' conduct as described, Plaintiff is entitled to recover from Defendants, on his own behalf and on behalf of others similarly situated, the maximum civil penalties permitted by the Private Attorneys General Act, including penalties under Labor Code §§226.3, and for all violations of Labor Code §§203, 206.5, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1 and 1198 as well as reasonable attorney's fees and costs.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

1. For an award of compensatory damages in an amount according to proof at trial;
2. For an order to pay minimum wages, overtime wages, statutory premium pay, liquidated damages, and penalties and interest according to proof at trial;
3. For penalties under Labor Code §2698 et seq., including penalties under Labor Code §§226.3.
4. For an order requiring Defendants to make restitution of all revenues, earnings, compensation and benefits obtained as a result of Defendants' wrongful conduct;
5. For preliminary and permanent injunctive relief prohibiting Defendants from engaging in the wrongful practices alleged in this Complaint;
6. For an award of costs and reasonable attorneys' fees as permitted by law, including but not

1 limited to Labor Code §§1194(a), 226(e) and 2699;

2 7. For interest as permitted by law, including but not limited to Labor Code §§1194, 1194.2,
3 1197.1, and Civil Code §§3287 and 3289.

4 8. For such other and further relief as the Court deems just and proper.

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6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs herein demand trial by jury on all of the foregoing matters.

8
9 DATED: February 26, 2021

LAW OFFICE OF
ALLAN A. VILLANUEVA

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12 Allan A. Villanueva
13 Attorney for Plaintiffs
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EXHIBIT A

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MEMBER OF THE BARS
CALIFORNIA AND HAWAII

VIA CERTIFIED MAIL

September 28, 2020

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(VIA ONLINE FILING)

Noris Orsi
NORTH BEACH RESTAURANT, INC.
1512 Stockton Street
San Francisco, CA 94133

Marie Trimble Holvick, Esq.
Gordon Rees Scully Mansukhani
275 Battery Street, Suite 2000
San Francisco, CA 94111

RE: *DANIEL BARTON v. NORTH BEACH RESTAURANT, INC.*

**Complaint under California Labor Code §2698 et seq. (Private Attorneys
General Act of 2004)**

To Whom It May Concern:

This office represents ***DANIEL BARTON***. Please direct all communications to this office.

He is an aggrieved employee and is making claims under Cal. Labor Code §2698 et seq. on his behalf and other current or former employees of Defendant NORTH BEACH RESTAURANT, INC. (collectively "aggrieved employees").

Defendant operates a North Beach Restaurant located at 1512 Stockton St, San Francisco, CA 94133. The aggrieved employees are restaurant workers including but not limited, to servers and bartenders.

Defendants are employers under IWC Wage Order 5, *Martinez v. Combs*, 49 Cal.4th 35 (2010) and Cal. Labor Code §558.1. Cal. Labor Code §558.1 which provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare

Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term other person acting on behalf of an employer is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term managing agent has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

Labor Code §226.7, §512, Title 8, §11050, §§11, 12 of the California Code of Regulations, Industrial Welfare Commission Wage Order No. 5-2001, §§11, 12

Labor Code §226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code §512 states,

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Title 8, §11050 of the California Code of Regulations provides:

Section 11. (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30

minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(C) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

Section 12. (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

The aggrieved employees were not provided meal and rest breaks in accordance with the law. They were not provided with meal breaks when they worked in excess of five hours, wherein defendant relieved its employees of all duty, relinquished control over their activities and permitted them a reasonable opportunity to take an uninterrupted 30 minute break and do not impede or discourage them from doing so. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038–1039.

Further, due to the nature of the work, defendant did not relieve its employees of all duties and relinquish any control over how employees spend their break time. *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 260 (citing *Brinker*).

Labor Code §510, §1194, Title 8, §11050, §§3, 4 of the California Code of Regulations, Industrial Welfare Commission Wage Order No. 5-2001, §§3, 4

Labor Code §510 provides, “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code Section §1194(a) states, “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Defendant regularly required the aggrieved employees to work off-the-clock, during which time the aggrieved employees were not paid the minimum wage or their regular rate of pay, or overtime wage when the aggrieved employees worked in excess of eight hours per day or forty hours per week.

Labor Code §206.5

Labor Code §206.5 provides, “(a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor. (b) For purposes of this section, “execution of a release” includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false.”

In order to be paid, the aggrieved employees were required to execute a statement of the hours he or she worked, which defendant knew to be false.

IWC Wage Order 5, ¶4; 8 CCR 11050, ¶4

Title 8, §11050 of the California Code of Regulations provides: “Section 4(C). When an employee works a split shift, one hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

The aggrieved employees typically worked split shifts, but were not paid the extra hour’s pay at the minimum wage.

Labor Code §226 and Labor Code §1174

Because of the above violations, the aggrieved employees' paystubs do not accurately state the gross and net wages earned, the total hours worked by the employee, and the applicable rates of pay.

Defendant DID NOT provide accurate itemized statements required by Labor Code §226. Section 226 requires, among other information:

- (1) gross wages earned,
- (2) total hours worked by the employee, except as provided in subdivision (j),
- (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 only the last four digits of his or her social security number or an employee identification number other than a social security number,
- (8) the name and address of the legal entity that is the employer and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Defendants further violated Labor Code §1174, which requires that payroll records show the accurate hours worked daily and the wages paid to the employees.

Labor Code §§201, 202, 203

The employment of some of the aggrieved employees were terminated, but all of their wages have not been paid in violation on Cal. Labor Code §201, 202, 203.

In sum, the aggrieved employees seek to bring a civil suit under Cal. Labor Code §2698 et seq. and seek all penalties allowed by law including but not limited to those set forth in Cal. Labor Code §§226.3.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Allan A. Villanueva', with a stylized flourish at the end.

Allan A. Villanueva