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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

FNU LINAKI, as an individual and on behalf of
all others similarly situated, and as a private
attorney general,

Plaintiffs,

vs.

GENJI PACIFIC, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) **VIOLATION OF LAB. CODE §§ 510, 558, 1194**
- (2) **VIOLATION OF LAB. CODE § 226(a);**
- (3) **VIOLATION OF BUS. & PROF. CODE §§ 17200 *ET SEQ.*; AND**
- (4) **VIOLATION OF LAB. CODE §§ 2698 *ET SEQ.***

DEMAND OVER \$25,000.00

FILED BY FAX

ALAMEDA COUNTY

September 23, 2020

CLERK OF
THE SUPERIOR COURT
By Jessica Flores, Deputy

CASE NUMBER:

RG20074795

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Fnu Linaki, submits this Class and Representative
3 Action Complaint against Defendant, Genji Pacific, LLC, and Does 1 through 50 (collectively,
4 “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 201-
9 204, 226(a), 510, 558, and 1194.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to pay all overtime due, failing to timely pay all wages due during employment or upon the
13 separation of employment, and failing to provide accurate itemized wage statements.

14 3. Defendants routinely fail to correctly calculate the regular rate of pay for purposes of
15 paying overtime to Plaintiff and other non-exempt employees. Specifically, Defendants fail to properly
16 calculate the regular rate of pay by not accounting for all non-discretionary compensation, including,
17 without limitation, incentives and bonuses such as “Ooiri Bonus” or annual bonus incentive wages.
18 Moreover, as a result of underpaid overtime from Defendants’ failure to correctly calculate the regular
19 rate of pay, Defendants also routinely fail to timely pay Plaintiff and other non-exempt employees all
20 due wages or timely pay all due wages upon separation of employment. Likewise, as a result of
21 underpaid overtime from Defendants’ failure to correctly calculate the regular rate of pay, Defendants
22 also routinely issue wage statements that fail to show accurate overtime wage rates, gross wages earned,
23 and net wages earned. Defendants thus violate Sections 201-204, 226(a), 510, 558, and 1194.

24 4. Defendants also routinely fail to pay Plaintiff and other aggrieved employees their earned
25 wages in a timely manner. Specifically, Defendants fail to pay Plaintiff and other employees their
26 earned wages within seven days of the last day of the pay period. Defendants thus violate Section 204.

27
28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

JURISDICTION AND VENUE

8. Venue is proper as Defendants employed Plaintiff in Fremont, California.

9. Plaintiff began working for Defendants in or about August of 2010. Until her employment as a supervisor sushi chef was terminated in or about August of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee. Throughout her employment, whenever Plaintiff was paid wages, like overtime, based on her regular rate of pay, Defendants failed to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation, including without limitation, incentives and bonuses such as “Ooiri Bonus” or annual bonus incentive wages. Because she was underpaid on such occasions, Defendants failed to timely pay Plaintiff all due wages during employment, failed to timely pay all due wages upon separation of employment, and failed to issue wage statements that show accurate overtime wage rates, gross wages earned, and net wages earned. For any wages that Plaintiff was paid, Defendants failed to timely pay Plaintiff as such wages were not paid within seven days of the last day of a pay period. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code and the UCL.

1 and were licensed to do business and actually doing business in the State of California. Based upon all
2 the facts and circumstances incident to Defendants' business, Defendants are subject to Section 201-
3 204, 226(a), 510, 558, and 1194, and the UCL.

4 11. Plaintiff does not know the true names or capacities of the defendants sued herein as
5 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
6 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true
7 names and capacities are known. Plaintiff is informed and believes that each of said fictitious
8 defendants was responsible in some way for the matters alleged herein and proximately caused the
9 illegal employment practices, wrongs, and injuries complained of herein.

10 12. At all times herein mentioned, each of said Defendants participated in the doing of the
11 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
12 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
13 scope of said agency and employment.

14 13. Plaintiff is informed and believes that at all times material hereto, each of said
15 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
16 each of the other Defendants and was acting within the course and scope of such agency, employment,
17 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
18 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
19 omissions of the acting Defendants.

20 14. Plaintiff is informed and believes that at all times material hereto each of the Defendants
21 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
22 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
23 pursuance of, a joint venture, partnership, or common enterprise.

24 CLASS ACTION ALLEGATIONS

25 15. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
26 certification of all current and former non-exempt employees of Defendants in the State of California
27 who earned overtime and non-discretionary compensation, including without limitation, incentives and
28 bonuses, in the same workweek at any time since April 6, 2016.

1 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
2 joinder of all members would be impractical, if not impossible. The identities of the members of the
3 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
4 informed and believes that Defendants violated Sections 510, 558, and 1194 by failing to pay all
5 overtime due, and Section 226(a) by failing to provide accurate itemized wage statements.

6 17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
7 represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready,
8 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have
9 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
10 and-hour class actions currently pending in California state and federal courts.

11 18. **Common Question of Law and Fact:** There are predominant common questions of law
12 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
13 informed and believes that Defendants uniformly administer a corporate policy and practice of (i)
14 routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff
15 and other non-exempt employees by not accounting for all non-discretionary compensation, including
16 without limitation, incentives and bonuses, and (ii) routinely failing to provide accurate, itemized wage
17 statements that show accurate overtime wage rates, gross wages earned, and net wages earned whenever
18 non-exempt employees in California are paid overtime wages.

19 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
20 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
21 Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis. Whenever
22 Plaintiff was paid wages based on her regular rate of pay, Defendants failed to properly calculate the regular
23 rate of pay by not accounting for all non-discretionary compensation, including without limitation,
24 incentives and bonuses such as “Ooiri Bonus” or annual bonus incentive wages. Because she was
25 underpaid on such occasions, Defendants failed to timely pay Plaintiff all due wages during
26 employment, failed to timely pay all due wages upon separation of employment, and failed to issue
27 wage statements that show accurate overtime wage rates, gross wages earned, and net wages earned.
28 Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

1 20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
2 in establishing minimum working conditions and requirements in California. These labor standards
3 protect employees from onerous terms and conditions of employment or exploitation by employers who
4 have superior economic and bargaining power.

5 21. The nature of this action and the format of laws available to Plaintiff and members of the
6 Class make the class action format a particularly efficient and appropriate procedure to redress the
7 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
8 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
9 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
10 legal resources. Requiring each member of the Class to pursue an individual remedy would also
11 discourage the assertion of lawful claims by employees who would be disinclined to file an action
12 against their former or current employer for real and justifiable fear of retaliation and permanent
13 damage to their careers at their current or subsequent employment.

14 22. The prosecution of separate actions by individual members of the Class, even if
15 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
16 individual members of the Class that would establish potentially incompatible standards of conduct for
17 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
18 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
19 of other members of the Class not parties to the adjudications. Further, the claims of the individual
20 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
21 the concomitant costs and expenses.

22 23. Defendants' pattern, practice, and uniform administration of corporate policy in
23 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
24 establish the rights of Plaintiff and the Class under Sections 201-204, 210, 218, 226(a), 510, 558, and
25 1194 and applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to
26 recover unpaid overtime, including interest thereon, applicable penalties, reasonable attorneys' fees,
27 and costs of suit.

24. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Violation of Labor Code §§ 510, 558, and 1194

(By Plaintiff and the Class Against All Defendants)

25. The preceding paragraphs are re-alleged and incorporated by this reference.

26. Section 510 requires an employer to pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any work exceeding eight hours in a workday or forty hours in a workweek.

27. As a matter of policy and practice, Defendants permit Plaintiff and the Class to work more than eight hours in a workday or 40 hours in a workweek without proper overtime pay. Defendants routinely fail to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff and the Class. Specifically, Defendants fail to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation, including, without limitation, incentives and bonuses. For example, Plaintiff received a non-discretionary “Ooiri Bonus” based on store profitability that was not included in her regular rate of pay for purposes of calculating overtime.

28. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Section 510 and the applicable IWC Wage Order, and entitles Plaintiff and the Class to recover the unpaid overtime, including interest thereon, liquidated damages or penalties, attorneys' fees, and costs of suit.

29. Moreover, Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the

1 same rate until paid, but the wages shall not continue for more than thirty (30) days. Section 204
2 generally provides that wages are due and payable twice during each calendar month, on days
3 designated in advance by the employer as the regular paydays.

4 30. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid
5 overtime to Plaintiff and the Class. Based on Defendants' failure to correctly calculate overtime,
6 Defendants routinely failed to timely pay Plaintiff and the Class all due wages during employment or to
7 timely pay all due wages upon separation of employment. On information and belief, Defendants were
8 advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it
9 relates to Plaintiff's allegations. By not timely paying Plaintiff and the Class all due wages during
10 employment and all due wages upon the separation of employment, Defendants violated Sections 201-
11 204 and owe applicable penalties, including waiting time penalties, to Plaintiff and other employees.

12 31. Such a pattern, practice, and uniform administration of corporate policy is unlawful
13 under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Class to
14 recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

15 **SECOND CAUSE OF ACTION**

16 **Violation of Labor Code § 226(a)**

17 **(By Plaintiff and the Class Against All Defendants)**

18 32. The preceding paragraphs are re-alleged and incorporated by this reference.

19 33. Section 226(a) requires an employer to furnish to its employees itemized wage
20 statements that show accurate information, including without limitation, all applicable hourly rates in
21 effect during the pay period, gross wages earned, and net wages earned.

22 34. As a matter of policy and practice, whenever Plaintiff and the Class are paid overtime
23 wages, Defendants fail to provide accurate itemized wage statements in violation of Section 226(a). As
24 alleged herein, Defendants routinely underpay overtime to Plaintiff and the Wage Statement Class. As a
25 result, and as a matter of policy and practice, Plaintiff and the Class are not provided with wage
26 statements listing accurate overtime wage rates, gross wages earned, or net wages earned.

35. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Violation of Business and Professions Code §§ 17200 *Et Seq.*

(By Plaintiff and the Class Against All Defendants)

36. The preceding paragraphs are re-alleged and incorporated by this reference.

37. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein in violation of Sections 510, 558, and 1194.

38. As alleged herein, Defendants uniformly administer a corporate policy and practice of routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff and the Class. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

39. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

Violation of Labor Code §§ 2698 *Et Seq.*

(By Plaintiff and Aggrieved Employees Against All Defendants)

40. The preceding paragraphs are re-alleged and incorporated by this reference.

41. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this

capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226(a), 510, 558, and 1194 committed since April 6, 2019, against all aggrieved employees.

42. As alleged herein, whenever non-exempt employees in California are paid overtime wages, Defendants violate Sections 201-204, 226(a), 510, 558, and 1194 by routinely (i) failing to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation, including without limitation, incentives and bonuses such as "Ooiri Bonus" or annual bonus incentive wages, (ii) failing to provide accurate, itemized wage statements that show accurate overtime wage rates, gross wages earned, and net wages earned whenever non-exempt employees in California are paid overtime wages, and (iii) failing to pay Plaintiff and other aggrieved employees their earned wages in a timely manner.

43. For pay periods in which Plaintiff and other employees in California are not paid overtime wages, Defendants nonetheless fail to timely pay Plaintiff and other aggrieved employees their earned wages in a timely manner. Specifically, Defendants fail to pay Plaintiff and other aggrieved their wages for work performed during a pay period within seven days of the last day of the pay period.

44. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

45. On or about September 9, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections 201-204, 226(a), 510, 558, and 1194. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

46. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 201-204, 226(a), 510, 558, and 1194 against all aggrieved employees for the alleged period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;

- 1 3. For an order appointing Counsel for Plaintiff as Class Counsel;
- 2 4. Upon the First Cause of Action for unpaid overtime, including interest thereon, and
- 3 penalties pursuant to Sections 201-204, 510, 1194, and 1198, and for costs and attorneys' fees;
- 4 5. Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs
- 5 and attorneys' fees;
- 6 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
- 7 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
- 8 and for costs and attorneys' fees;
- 9 7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections
- 10 210, 226.3, 558, and 2699, and for costs and attorneys' fees;
- 11 8. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
- 12 226, 1194, and 2699, and Code of Civil Procedure section 1021.5; and
- 13 9. For such other and further relief that the Court may deem just and proper.

14 DATED: September 22, 2020

DIVERSITY LAW GROUP, P.C.

15 By: 
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Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

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