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Superior Court of California
County of Los Angeles
JUN 04 2021
Sherri R. Carter, Executive Officer/Clerk of Court

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES

14 UNLIMITED JURISDICTION

15 EVELYN VANESSA GONZALEZ, on behalf
16 of herself and all others similarly situated,

17 *Plaintiff,*

18 vs.

19 SSP AMERICA, INC., a California
20 corporation; SSP AMERICA LAX, LLC, a
21 Delaware corporation; CASSELL'S
22 HAMBURGERS, LLC, a California
23 corporation; TREJOS TACOS WESTSIDE
24 LLC, a California corporation; and DOES 1
25 through 50, inclusive,

26 *Defendants.*

Case No.: 20STCV41303
Consolidated with 19STCV08579

[Assigned for all purposed to the Hon. Elihu M.
Berle, Dept. 6]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Failure to Indemnify (Lab. Code § 2802);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiffs EVELYN VANESSA GONZALEZ (“Plaintiffs”), on behalf of herself, the State of
2 California, all others similarly situated, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants SSP
5 AMERICA, INC, .a California corporation; SSP AMERICA LAX, LLC, a Delaware corporation;
6 CASSELL’S HAMBURGERS, LLC, a California corporation; TREJOS TACOS WESTSIDE LLC,
7 a California corporation, and DOES 1 through 50, inclusive (collectively referred to as “Defendants”)
8 for alleged violations of the California Labor Code, the California Industrial Welfare Commission
9 (“IWC”) wage Orders, and California Business and Professions Code. As set forth below, Plaintiff
10 alleges that Defendants have:

- 11 (1) failed to pay overtime wages at the correct rate;
- 12 (2) failed to pay overtime wages by failing to include all applicable remuneration
13 in calculating the regular rate of pay;
- 14 (3) failed to provide meal periods;
- 15 (4) failed to provide with rest periods;
- 16 (5) failed to pay at least minimum wage for all hours worked;
- 17 (6) failed to pay premium wages for missed meal and/or rest periods;
- 18 (7) failed to reimburse them for necessary business expenditures incurred;
- 19 (8) failed to provide accurate written wage statements; and
- 20 (9) failed to pay all final wages following separation of employment.

21 2. Based on these alleged Labor Code violations, Plaintiff now bring this class and
22 representative action to recover unpaid wages, liquidated damages, penalties, restitution and related
23 relief on behalf of themselves, all others similarly situated, and the general public.

24 **JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction to hear this case because the monetary
26 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
27 of the Superior Court of the State of California.

28 4. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure

1 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
2 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
3 maintains offices, transacts business and/or has an agent therein.

4 5. Venue is proper in Los Angeles County because Defendants' have at all times alleged
5 herein, conducted business in Los Angeles County, and throughout California. As such, venue is
6 proper in any county in California.

7 6. Plaintiff is informed and believes, and thereupon alleges that the individual claims of
8 the classes defined below are under the \$75,000 threshold for federal diversity jurisdiction and the
9 aggregate claim is under the \$5,000,000 threshold for federal jurisdiction under the Class Action
10 Fairness Act of 2005.

11 **PARTIES**

12 7. Plaintiff EVELYN VANESSA GONZALEZ is, and at all relevant times mentioned
13 herein, an individual residing in the State of California.

14 8. Plaintiffs is informed and believes, and thereupon alleges that Defendant SSP
15 AMERICA, INC., a California corporation is, and at all relevant times mentioned herein, a California
16 corporation doing business in the State of California.

17 9. Plaintiffs is informed and believes, and thereupon alleges that Defendant SSP
18 AMERICA LAX, LLC, a Delaware corporation is, and at all relevant times mentioned herein, a
19 California corporation doing business in the State of California.

20 10. Plaintiffs is informed and believes, and thereupon alleges that Defendant CASSELL'S
21 HAMBURGERS, LLC, a California corporation; is, and at all relevant times mentioned herein, a
22 California corporation doing business in the State of California.

23 11. Plaintiffs is informed and believes, and thereupon alleges that Defendant TREJOS
24 TACOS WESTSIDE LLC, a California corporation; is, and at all relevant times mentioned herein, a
25 California corporation doing business in the State of California.

26 12. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
27 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
28 will amend this Complaint to allege the true names and capacities of the DOE defendants when

1 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
2 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
3 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
4 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
5 defendants when ascertained.

6 13. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
7 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
8 directors, associates, joint venturers, joint employers, principals or co-participants of some or all of
9 the other defendants, and in doing the things alleged herein, were acting within the course and scope
10 of such relationship and with the full knowledge, consent and ratification by such other defendants.

11 14. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
12 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
13 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
14 and omissions alleged herein.

15 CLASS ALLEGATIONS

16 15. This action has been brought and may be maintained as a class action pursuant to Code
17 of Civil Procedure section 382 because there is a well-defined community of interest among the
18 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
19 unaware of any difficulties likely to be encountered in managing this case as a class action.

20 16. **Relevant Time Period:** The relevant time period is defined as the time period
21 beginning four years prior to the filing of this action until judgment is entered.

22 17. Plaintiff seeks to represent the classes and sub-classes defined as follows:

23 **Hourly Employee Class:** All persons employed by Defendants, collectively or separately,
24 and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions
25 in California four years prior to the filing of this action and ending on the date that final
26 judgment is entered in this action ("Hourly Employee Class").

27 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
28 shift in excess of five hours during the four years prior to the filing of this action and
ending on the date that final judgment is entered in this action.

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift
of at least three and one-half (3.5) hours the four years prior to the filing of this action

and ending on the date that final judgment is entered in this action.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

Wage Statement Sub-Class: All persons employed by Defendants, collectively or separately, and/or any staffing agencies and/or any other third parties in California one year before the filing of this action and ending when final judgment is entered.

Reimbursement Class: All persons employed by Defendants in California who incurred unreimbursed business expenditures for Defendants during the period beginning four years before the filing of this action and ending when final judgment is entered.

UCL Class: All **Hourly Employee Class** members employed by Defendants in California during the four years prior to the filing of this action and ending on the date that final judgment is entered in this action.

18. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into sub-classes and/or by limitation to particular issues.

19. **Numerosity:** The class members are so numerous that the individual joinder of each individual class member is impractical. While Plaintiff does not currently know the exact number of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number exceeds the minimum required for numerosity under California law.

20. **Commonality and Predominance:** Common questions of law and fact exist as to all class members and predominate over any questions which affect only individual class members. These common questions include, but are not limited to:

- A. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- B. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- C. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest periods;
- D. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;

- 1 E. Whether Defendants failed to pay minimum and/or overtime wages to class
2 members for all time worked;
- 3 F. Whether Defendants failed to pay overtime wages to class members at the
4 correct rate of pay;
- 5 G. Whether Defendants failed to provide class members with accurate written
6 wage statements as a result of providing them with written wage statements
7 with inaccurate entries for, among other things, amounts of gross and net
8 wages, and total hours worked;
- 9 H. Whether Defendants applied policies or practices that result in late and/or
10 incomplete final wage payments;
- 11 I. Whether Defendants failed to reimburse class members for necessary business
12 expenditures incurred;
- 13 J. Whether Defendants are liable to class members for waiting time penalties
14 under Labor Code section 203; and
- 15 K. Whether class members are entitled to restitution of money or property that
16 Defendants may have acquired from them through unfair competition;

17 21. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff
18 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
19 comply with the California Labor Code, applicable Wage Orders, and Business and Professions Code
20 as alleged in this Complaint.

21 22. **Adequacy of Class Representatives**: Plaintiff is an adequate class representatives in
22 that she has no interests that are adverse to, or otherwise conflict with, the interests of absent class
23 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
24 and adequately represent and protect the interests of the other class members.

25 23. **Adequacy of Class Counsel**: Plaintiff's counsel are adequate class counsel in that
26 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
27 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
28 of Plaintiff and absent class members.

24. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS

25. Plaintiff worked for Defendants as a non-exempt, hourly employee during the relevant time period.

Meal/Rest Periods

26. Plaintiff and the putative class members were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no formal written meal policy that encouraged employees to take their meal periods, or that advised Plaintiff and class members of their meal and rest period rights; and (3) Defendants' practice of requiring Plaintiff and the putative class to continue working due to the excessive workload.

27. Plaintiff and the putative class members were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) no formal written rest period policy that encouraged employees to take their rest periods, or that advised Plaintiff and class members of their meal and rest period rights; and (3) Defendants' practice of requiring Plaintiff and the putative class to continue working due to the excessive workload.

28. As Plaintiff and the putative class were often given work-related tasks to complete during their meal periods due to the excessive workload in the store. Additionally, Defendants had

1 a policy of automatically deducting thirty minutes from Plaintiffs' and class members' paychecks,
2 regardless of whether Plaintiffs took a lunch break or not.

3 29. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
4 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
5 worked due to complying with Defendants' requirements that required Plaintiff and the putative class
6 to utilize a portion of their meal periods to complete tasks in the store.

7 **Off-the-Clock**

8 30. Defendants had a common policy and practice of denying Plaintiff and putative class
9 members minimum wages for all hours worked. Specifically, Plaintiff and class member were
10 required to perform pre-shift and post-shift duties, off the clock, for which they were not paid wages.
11 Among these duties were mandatory security checks Plaintiff and class members had to undergo
12 before being allowed to clock in.

13 31. Also, and as discussed above, Defendants had a common policy and practice of
14 denying Plaintiff and class members uninterrupted meal periods in compliance with California law.
15 Plaintiff and class members were required to perform work duties during their meal period for which
16 they were not paid wages.

17 32. As a result of performing off-the-clock work that was directed, permitted or otherwise
18 encouraged by Defendants, Plaintiff and the putative class should have been paid for this time.
19 Instead, Defendants only paid Plaintiff and the putative class based on the time they were clocked in
20 for their shifts and did not pay Plaintiff and the putative class for any of the time spent working off-
21 the-clock.

22 33. The uncompensated time discussed herein caused Plaintiff and class members to work
23 in excess of eight hours a day and/or forty hours as week, entitled them to overtime wages which they
24 were systemically denied.

25 34. Defendants knew or should have known that Plaintiff and the putative class were
26 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
27 putative class for these hours.

28 35. Defendants were aware of this practice and directed, permitted or otherwise

1 encouraged Plaintiff and the putative class to perform off-the-clock work.

2 36. As a result of Defendants' policies and practices, Plaintiff and the putative class were
3 not paid for all hours worked.

4 Overtime

5 37. The regular rate of pay under California law includes all remuneration for
6 employment paid to, on behalf of, the employee. During the applicable limitations period,
7 Defendants violated the rights of Plaintiff and the putative class under the above-referenced Labor
8 Code sections by failing to pay them overtime wages for all overtime hours worked in violation of
9 Labor Code §§ 510, 1194, and 1198. As discussed above, Plaintiff and class members were required
10 to work off-the-clock without pay. These uncompensated hours were worked in excess of eight (8)
11 hours a day and/or forty (40) hours a week entitled Plaintiff and class members to overtime wages
12 to which they were systemically denied.

13 Unreimbursed Business Expenses

14 38. Defendants also failed to reimburse Plaintiff and class members for necessary
15 expenditures in violation of Labor Code § 2802. Defendants required Plaintiff and class members to
16 maintain uniforms provided to them as a necessary condition of employment. Specifically, Plaintiff
17 and class members were provided with a uniform that consisted of a shirt. Plaintiff and class members
18 were required to maintain that uniform to be presentable and in good, clean condition by washing
19 their uniforms. Defendants did not maintain the uniforms provided to Plaintiff and class members.
20 Plaintiff and class members had to do laundry several times a week in order to maintain their uniforms
21 in a presentable condition. Plaintiff and class members were never reimbursed for such expenditures
22 necessary to maintain those uniforms in good condition.

23 39. Additionally, Plaintiff and class members were required to purchase no-slip shoes and
24 black slacks in order to execute their duties under Defendants' employ, and for which they were never
25 reimbursed.

26 Wage Statements

27 40. Plaintiff and the putative class were not provided with accurate wage statements as
28 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue Plaintiff

1 and class members wage statements “as a detachable part of the check, draft, or voucher paying the
2 employee’s wages . . . recorded in ink.”

3 41. Additionally, Defendants failed to comply with Labor Code section 226(a)(1) as
4 “gross wages earned” were not accurately reflected in that: all hours worked, including overtime,
5 were not included.

6 42. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
7 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
8 not included.

9 43. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
10 were not accurately reflected in that: all hours worked, including overtime, were not included.

11 44. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
12 hourly rates in effect during the pay period and the corresponding number of hours worked at each
13 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
14 overtime, were not included.

15 45. Plaintiff alleges that Defendants were aware of the inaccuracy of the wage statements
16 issued throughout the entire applicable period and that both they and class members have suffered
17 injury as a result.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PROVIDE MEAL PERIODS**

20 **(Lab. Code §§ 004, 223, 226.7, 512 and 1198)**

21 **(Plaintiff and Meal Period Sub-Class)**

22 46. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
23 fully alleged herein.

24 47. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
25 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
26 Code and the applicable Industrial Welfare Commission Wage Order.

27 48. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
28 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt

1 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
2 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
3 minutes for each work period of ten hours.

4 49. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
5 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
6 during required meal periods and require employers to pay non-exempt employees an hour of
7 premium wages on each workday that the employee is not provided with the required meal period.

8 50. Compensation for missed meal periods constitutes wages within the meaning of Labor
9 Code section 200.

10 51. Labor Code section 1198 makes it unlawful to employ a person under conditions that
11 violate the applicable Wage Order.

12 52. Section 11 of the applicable Wage Order states:

13 “No employer shall employ any person for a work period of more than five (5) hours
14 without a meal period of not less than 30 minutes, except that when a work period of
15 not more than six (6) hours will complete the day’s work the meal period may be
16 waived by mutual consent of the employer and employee. Unless the employee is
17 relieved of all duty during a 30 minute meal period, the meal period shall be considered
18 an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
19 be permitted only when the nature of the work prevents an employee from being
20 relieved of all duty and when by written agreement between the parties an on-the-job
21 paid meal period is agreed to. The written agreement shall state that the employee
22 may, in writing, revoke the agreement at any time.”

23 53. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
24 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
25 members were not subject to valid on-duty meal period agreements with Defendants.

26 54. Plaintiff alleges that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
28 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
hour work period, as required by Labor Code section 512 and the applicable Wage Order.

55. Plaintiff alleges that, at all relevant times during the applicable limitations period,
Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
Class members when they worked five (5) hours without clocking out for any meal period.

56. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order. Additionally, Defendants had a policy of automatically deducting thirty minutes from Plaintiffs' and class members' paychecks, regardless of whether Plaintiffs took a lunch break or not.

57. Moreover, Defendants written policies fail to inform **Meal Period Sub-Class** Members of their meal period rights under the Labor Code and applicable Wage Orders.

58. At all relevant times, Defendants failed to pay Plaintiffs and the **Meal Period Sub-Class** members additional premium wages, and/or were not paid premium wages at the employees' regular rates of pay when required meal periods were not provided.

59. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

60. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the **Meal Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(Lab. Code §§ 204, 223, 226.7 and 1198)

(Plaintiff and Rest Period Sub-Class)

61. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

62. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been non-exempt employees of Defendants entitled to the full rest period protections of both the Labor Code and the applicable Wage Order.

63. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten

1 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
2 middle of each work period insofar as practicable.

3 64. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
4 employers from requiring employees to work during required rest periods and require employers to
5 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
6 workday that the employee is not provided with the required rest period(s).

7 65. Compensation for missed rest periods constitutes wages within the meaning of Labor
8 Code section 200.

9 66. Labor Code section 1198 makes it unlawful to employ a person under conditions that
10 violate the Wage Order.

11 67. Plaintiff alleges that, at all relevant times during the applicable limitations period,
12 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
13 with net rest period of at least ten minutes for each four hour work period, or major fraction thereof,
14 as required by the applicable Wage Order.

15 68. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
16 members additional premium wages when required rest periods were not provided.

17 69. Moreover, Defendants written policies fail to inform **Rest Period Sub-Class** Members
18 of their rest period rights under the Labor Code and applicable Wage Orders. Specifically, Defendants
19 written policies do not provide that employees may take a rest period for each four hours worked, or
20 major fraction thereof, and that rest periods should be taken in the middle of each work period insofar
21 as practicable.

22 70. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself
23 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
24 costs of suit.

25 71. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
26 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
27 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

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1 conditions that violate the applicable Wage Order.

2 81. Labor Code section 204 requires employers to pay non-exempt employees their earned
3 wages for the normal work period at least twice during each calendar month on days the employer
4 designates in advance and to pay non-exempt employees their earned wages for labor performed in
5 excess of the normal work period by no later than the next regular payday.

6 82. Labor Code section 223 makes it unlawful for employers to pay their employees lower
7 wages than required by contract or statute while purporting to pay them legal wages.

8 83. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
9 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
10 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
11 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
12 consecutive day of one workweek.

13 84. Labor Code section 510 and Section 3 of the applicable Wage Order also require
14 employers to pay non-exempt employees overtime wages of no less than two times their respective
15 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
16 worked in excess of eight hours on a seventh consecutive workday during the workweek.

17 85. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
18 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
19 working conditions and compensation arrangements.

20 86. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
21 **Employee Class** members for all time worked, including but not limited to, overtime hours at
22 statutory and/or agreed rates.

23 87. Defendants had a common policy and practice of denying Plaintiff and **Hourly**
24 **Employee Class** members minimum wages for all hours worked. Specifically, Plaintiff and **Hourly**
25 **Employee Class** were required to perform pre-shift and post-shift duties, off the clock, for which
26 they were not paid wages. Among these duties were mandatory security checks Plaintiff and class
27 members had to undergo before being allowed to clock in.

28 88. Also, and as discussed above, Defendants had a common policy and practice of

1 denying Plaintiff and **Hourly Employee Class** uninterrupted meal periods in compliance with
2 California law. Plaintiff and **Hourly Employee Class** were required to perform work duties during
3 their meal period for which they were not paid wages.

4 89. As a result of performing off-the-clock work that was directed, permitted or otherwise
5 encouraged by Defendants, Plaintiff and the **Hourly Employee Class** should have been paid for this
6 time. Instead, Defendants only paid Plaintiff and the **Hourly Employee Class** based on the time they
7 were clocked in for their shifts and did not pay Plaintiffs and the **Hourly Employee Class** for any of
8 the time spent working off-the-clock.

9 90. The uncompensated time discussed herein caused Plaintiff and **Hourly Employee**
10 **Class** to work in excess of eight hours a day and/or forty hours a week, entitled them to overtime
11 wages which they were systemically denied.

12 91. Defendants knew or should have known that Plaintiffs and the **Hourly Employee**
13 **Class** were performing work before and after their scheduled work shifts and failed to pay Plaintiff
14 and the **Hourly Employee Class** for these hours.

15 92. Defendants were aware of this practice and directed, permitted or otherwise
16 encouraged Plaintiffs and the **Hourly Employee Class** to perform off-the-clock work.

17 93. As a result of Defendants' policies and practices, Plaintiff and the **Hourly Employee**
18 **Class** were not paid for all hours worked.

19 94. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
20 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
21 full amount of wages earned during each pay period during the applicable limitations period,
22 including overtime wages.

23 95. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
24 behalf of herself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
25 overtime wages, interest thereon and costs of suit.

26 96. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
27 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
28 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 97. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 98. Labor Code section 226(a) states:

8 “An employer, semimonthly or at the time of each payment of wages, shall furnish to
9 his or her employee, either as a detachable part of the check, draft, or voucher paying
10 the employee’s wages, or separately if wages are paid by personal check or cash, an
11 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
12 worked by the employee, except as provided in subdivision (j), (3) the number of
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
14 rate basis, (4) all deductions, provided that all deductions made on written orders of
15 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
16 inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number or an
18 employee identification number other than a social security number, (8) the name and
19 address of the legal entity that is the employer and, if the employer is a farm labor
20 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
21 legal entity that secured the services of the employer, and (9) all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at
23 each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
24 temporary services employer as defined in Section 201.3, the rate of pay and the total
25 hours worked for each temporary services assignment. The deductions made from
26 payment of wages shall be recorded in ink or other indelible form, properly dated,
27 showing the month, day, and year, and a copy of the statement and the record of the
28 deductions shall be kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For purposes of
this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.”

99. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
“detachable part of the check” provision and the “accurate itemized statement in writing” provision
of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
retains the right to elect to receive a written paper stub or record and that those who are provided with
electronic wage statements retain the ability to easily access the information and convert the electronic
statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

100. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Class** members with written

1 wage statements as described above. Specifically, Defendants failed to issue Plaintiff and class
2 members wage statements “as a detachable part of the check, draft, or voucher paying the employee’s
3 wages . . . recorded in ink.”

4 101. Additionally, the wage statements issued to class members failed to account for the
5 unpaid minimum wages, overtime, and premium pay wages described above.

6 102. Plaintiff is informed and believes that Defendants’ failure to provide her and **Wage**
7 **Statement Class** members with accurate written wage statements were intentional in that Defendants
8 have the ability to provide them with accurate wage statements but have intentionally provided them
9 with written wage statements that Defendants have known do not comply with Labor Code section
10 226(a).

11 103. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
12 Defendant has violated their legal rights to receive accurate wage statements and have misled them
13 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
14 statements have prevented immediate challenges to Defendants’ unlawful pay practices, has required
15 discovery and mathematical computations to determine the amount of wages owed, has caused
16 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
17 submission of inaccurate information about wages and deductions to federal and state government
18 agencies.

19 104. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
20 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
21 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
22 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
23 \$4000.00 per class member, as well as awards of reasonable attorneys’ fees and costs.

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FIFTH CAUSE OF ACTION
FAILURE TO TIMELY PAY ALL FINAL WAGES
(Lab. Code §§ 201-203)
(Plaintiff and Waiting Time Penalties Sub-Class)

105. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

106. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have been entitled, upon the end of their employment with Defendants, to timely payment of all wages earned and unpaid before termination or resignation.

107. At all relevant times, pursuant to Labor Code section 201, employees who have been discharged have been entitled to payment of all final wages immediately upon termination.

108. At all relevant times, pursuant to Labor Code section 202, employees who have resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to payment of all final wages at the time of resignation.

109. Plaintiff is informed and believes that, at all relevant time during the applicable limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in accordance with the Labor Code.

110. Plaintiff is informed and believe that, at all relevant times during the applicable limitations period, Defendants have maintained a policy or practice of paying **Waiting Time Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to timely pay them all final wages.

111. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible with those requirements.

112. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their

1 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

2 113. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
3 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
4 **Class** members, seeks awards of reasonable attorneys' fees and costs.

5 **SIXTH CAUSE OF ACTION**

6 **FAILURE TO INDEMNIFY**

7 **(Lab. Code § 2802)**

8 **(Plaintiff and Expense Reimbursement Class)**

9 114. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
10 herein.

11 115. Labor Code section 2802(a) states:

12 "An employer shall indemnify his or her employee for all necessary expenditures or
13 losses incurred by the employee in direct consequence of the discharge of his or her
14 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful."

15 116. At all relevant times during the applicable limitations period, Plaintiff and the **Expense**
16 **Reimbursement Class** members incurred necessary business related expenses and costs. Defendants
17 required Plaintiff and the **Expense Reimbursement Class** to maintain uniforms provided to them as
18 a necessary condition of employment. Specifically, Plaintiff and the **Expense Reimbursement Class**
19 were provided with a uniform that consisted of a shirt. Plaintiff and the **Expense Reimbursement**
20 **Class** were required to maintain that uniform to be presentable and in good, clean condition by
21 washing their uniforms. Defendants did not maintain the uniforms provided to Plaintiff and the
22 **Expense Reimbursement Class**. Plaintiff and the **Expense Reimbursement Class** had to do laundry
23 several times a week in order to maintain their uniforms in a presentable condition. Plaintiff and the
24 **Expense Reimbursement Class** were never reimbursed for such expenditures necessary to maintain
25 those uniforms in good condition.

26 117. Additionally, Plaintiff and the **Expense Reimbursement Class** were required to
27 purchase no-slip shoes and black slacks in order to execute their duties under Defendants' employ,
28 and for which they were never reimbursed.

118. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid by Defendants was insufficient to indemnify Plaintiff and **Expense Reimbursement Class** members for all necessary expenses incurred in the discharge of their duties.

119. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such expenditures.

120. Plaintiff is informed and believes that, during the applicable limitations period, Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense Reimbursement Class** members for all necessary business expenses.

121. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to restitution for all unpaid amounts due and owing to within four years of the date of the filing of the Complaint and until the date of entry of judgment.

122. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seek interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200 *et seq.*)

(Plaintiff and UCL Class)

123. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

124. Business and Professions Code section 17200 defines "unfair competition" to include any unlawful business practice.

125. Business and Professions Code section 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure section 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

1 126. California law requires employers to pay hourly, non-exempt employees for all hours
2 they are permitted or suffered to work, including hours that the employer knows or reasonable should
3 know that employees have worked.

4 127. Plaintiff and the **UCL Class** members re-allege and incorporate the FIRST, SECOND,
5 THIRD, and SIXTH causes of action herein.

6 128. Plaintiff lost money or property as a result of the aforementioned unfair competition.

7 129. Defendants have or may have acquired money by means of unfair competition.

8 130. Defendants have violated California laws through their policies and practices of, *inter*
9 *alia*, systemically violating sections 215, 216, 221, 225, 226.6, 226.7, 354, 408, 512, 510, 553, 1175,
10 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and 2802 of the Labor Code, which make it a
11 misdemeanor to commit the Labor Code violations alleged herein.

12 131. Defendants have committed criminal conduct through their policies and practices of,
13 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
14 employees with compliant meal and rest periods; and pay non-exempt employees for all hours
15 worked.

16 132. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
17 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
18 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
19 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
20 unlawful or fraudulent business practice to seek restitution on her own behalf and on behalf of
21 similarly situated persons in a class action proceeding.

22 133. As a result of Defendants' violations of the Labor Code during the applicable
23 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
24 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

25 134. Plaintiff is informed and believes that other similarly situated persons have been
26 subject to the same unlawful policies or practices of Defendants.

27 135. Due to the unfair and unlawful business practices in violation of the Labor Code,
28 Defendants have gained a competitive advantage over other comparable companies doing business in

1 the State of California that comply with their legal obligations.

2 136. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
3 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
4 or is considered unlawful under any other state or federal law.

5 137. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
6 requests the issuance of temporary, preliminary, and permanent injunctive relief enjoining
7 Defendants, and each of them, and their agents and employees, from further violations of the Labor
8 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
9 order permanently enjoining Defendants, and each of them, and their respective agents and
10 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
11 Wage Orders.

12 138. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
13 herself and **UCL Class** members, seeks declaratory relief and restitution of all monies rightfully
14 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
15 and unfair business practices.

16 139. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
17 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
18 reasonable attorneys' fees in connection with their unfair competition claims.

19 140. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
20 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
21 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
22 and unfair business practices.

23 141. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
24 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
25 reasonable attorneys' fees in connection with their unfair competition claims.

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1 employee, plus 25% of the amount unlawfully withheld from each employee,
2 for each initial violation that was either willful or intentional, and \$200 for
3 each employee, plus 25% of the amount unlawfully withheld from each
4 employee, for each subsequent violation, regardless of whether the
5 subsequent violation was either willful or intentional (penalties set by Labor
6 Code section 210);

7 D. For violations of Labor Code section 223, \$100 for each employee for each
8 initial violation that was neither willful nor intentional, \$200 for each
9 employee, plus 25% of the amount unlawfully withheld from each employee,
10 for each initial violation that was either willful or intentional, and \$200 for
11 each employee, plus 25% of the amount unlawfully withheld from each
12 employee, for each subsequent violation, regardless of whether the
13 subsequent violation was either willful or intentional (penalties set by Labor
14 Code section 225.5);

15 E. For violations of Labor Code section 226(a), if this action is deemed to be an
16 initial citation, \$250 for each employee for each violation. Alternatively, if
17 an initial citation or its equivalent occurred before the filing of this action,
18 \$1,000 for each employee for each violation (penalties set by Labor Code
19 section 226.3);

20 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
21 each initial pay period for which the employee was underpaid, and \$100 for
22 each employee for each subsequent pay period for which the employee was
23 underpaid (penalties set by Labor Code section 558);

24 G. For violations of Labor Code section 1197, \$100 for each aggrieved
25 employee for each initial violation of Labor Code section 1197 that was
26 intentional, and \$250 for each aggrieved employee per pay period for each
27 subsequent violation of Labor Code section 1197, regardless of whether the
28 initial violation was intentional (penalties set by Labor Code section 1197.1);

1 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
2 attorneys' fees and costs in connection with her claims for civil penalties.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general
5 public, prays for relief and judgment against Defendants as follows:

- 6 (1) An order that the action be certified as a class action;
- 7 (2) An order that Plaintiff be appointed class representative;
- 8 (3) An order that counsel for Plaintiff be appointed class counsel;
- 9 (4) Unpaid wages;
- 10 (5) Actual damages;
- 11 (6) Liquidated damages;
- 12 (7) Unreimbursed expenses;
- 13 (8) Restitution;
- 14 (9) Declaratory relief;
- 15 (10) Pre-judgment interest;
- 16 (11) Statutory penalties;
- 17 (12) Civil penalties;

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- 1 (13) Costs of suit;
2 (14) Reasonable attorneys' fees; and
3 (15) Such other relief as the Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of herself, all other similarly situated, and the general public, hereby
6 demands a jury trial on all issues so triable.

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8 Dated: June 2, 2021

SETAREH LAW GROUP

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Shaun Setareh
David Keledjian
Attorneys for Plaintiff
EVELYN VANESSA GONZALEZ

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PROOF OF SERVICE

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9665 Wilshire Boulevard, Suite 430 Beverly Hills, CA 90212.

On June 4, 2021, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

Denise M. Visconti
dvisconti@littler.com

Christina H. Hayes
chayes@littler.com

LITTLER MENDELSON, P.C.

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San Diego, CA 92101

**Counsel for Defendants SSP AMERICA,
INC., SSP AMERICA LAX, LLC,
CASSELL'S HAMBURGERS, LLC,
AND LARCHMONT HOSPITALITY
GROUP LLC (erroneously sued as
TREJOS TACOS WESTSIDE LLC)**

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Counsel for Plaintiff Tramon Wilson-Davis

[X] ONLY BY ELECTRONIC TRANSMISSION

Pursuant to the Court's April 21, 2021 Order authorizing Electronic Service, the above-named documents have been electronically served on counsel of record by transmission on Case Anywhere system on the date below. The transmission of these documents to Case Anywhere system was reported complete and a copy of the Case Anywhere transaction receipt will be maintained along with the original document(s) and proof of service in our office.

[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 4, 2021, at Beverly Hills, California.


Lauren Farrington