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ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 14 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

KATHERINE TOWNSEND, an individual, on
behalf of herself, and on behalf of all persons
similarly situated, and on behalf of all
aggrieved employees

Plaintiffs,

vs.

RO-AL, INC., a California Corporation;
PATRICK MOLLOY BASTIAN, an
individual; ALICE BASTIAN HAHN, an
individual; FRED HAHN, an individual; and
DOES 1 through 50 inclusive.

Defendants.

Case No. 20STCV18526

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF:**

1. **FAILURE TO PAY OVERTIME
COMPENSATION AND
LIQUIDATED DAMAGES** [CAL.
LAB. CODE §§ 510, 1194, 1194.2,
and 1198];
2. **FAILURE TO PAY MINIMUM
WAGES AND LIQUIDATED
DAMAGES** [CAL. LAB. CODE §§
1182.12, 1194; 1194.2; 1197; 1197.1;
and 1198 and 8 CAL. CODE REGS. §§
11050];
3. **FAILURE TO PROVIDE MEAL
PERIODS** [CAL. LAB. CODE §§
226.7 and 512, and 8 CAL. CODE
REGS. § 11050];
4. **FAILURE TO PROVIDE REST
PERIODS** [CAL. LAB. CODE §§
226.7 and 512, and 8 CAL. CODE
REGS. § 11050];
5. **FAILURE TO PROVIDE
ITEMIZED STATEMENTS** [CAL.
LAB. CODE § 226];
6. **FAILURE TO REIMBURSE
BUSINESS EXPENSES** [Cal. Lab.
Code § 2800, 2802];
7. **FAILURE TO PROVIDE
ADEQUATE SEATING** [CAL. LAB.
CODE § 1198; CAL. CODE REGS. §
11050(14)];

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8. **IMPROPER RECEIPT AND DISTRIBUTION OF GRATUITIES [CAL. LAB. CODE § 351];**
9. **FAILURE TO PAY WAGES UPON TERMINATION OF EMPLOYMENT [CAL. LAB. CODE § 203];**
10. **VIOLATION OF CALIFORNIA LABOR CODE § 558; and,**
11. **UNFAIR COMPETITION [CAL. BUS. & PROF. CODE § 17200 *et seq.*]; and,**
12. **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT [CAL. LAB. CODE §§ 2698, *et seq.*]**

DEMAND FOR A JURY TRIAL

Complaint filed: May 12, 2020

Trial Date: None Set

All allegations in this First Amended Complaint are based upon information and belief except for those allegations that pertain to the named Plaintiff and her counsel. Each allegation has evidentiary support, or is likely to have evidentiary support, after a reasonable opportunity for further investigation and discovery.

I.

JURISDICTION AND VENUE

1. The court has jurisdiction over this Complaint under CAL. CIV. PROC. CODE § 410.10. The action is brought under CAL. CIV. PROC. CODE. § 382, the procedural provisions of FED. RULES OF CIV. PROC., RULE 23, and CAL. BUS. & PROF. CODE §§ 17200 *et seq.* The Plaintiff brings this Complaint on her own behalf, and on behalf of all persons in the putative Class as defined in Paragraph 16 below, as well as on behalf of all aggrieved employees.

2. Venue is proper in the Court under CAL. CIV. PROC. CODE §§ 395 and 395.5 because the claims made, and the CAL. LAB. CODE violations as against the persons identified herein, occurred in the County of Los Angeles. Further, each of the Defendants owned and operated their businesses in the County of Los Angeles.

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II.

THE PARTIES

PLAINTIFF

3. KATHERINE TOWNSEND (“TOWNSEND”) is, and at all material times mentioned was:

- (a) An individual who resides in the County of Los Angeles, California;
- (b) Formerly jointly employed as an hourly paid employee by RO-AL, INC., PATRICK MOLLOY BASTIAN, ALICE BASTIAN HAHN, FRED HAHN, and / or DOES 1 through 50 (“DEFENDANTS”), from on or about May 2018 to October 2018;
- (c) Worked more than eight (8) hours in any given day;
- (d) Worked more than forty (40) hours in any given week;
- (e) Did not receive meal or rest periods;
- (f) Was not properly paid for time worked, did not receive overtime compensation, did not receive rest/meal period premiums, did not receive accurate itemized wage statements, did not receive proper reimbursements for business expenses, and was not provided with adequate seating; and,
- (g) When terminated from her employment, was not paid for overtime and meal and rest period wages due within the time limits prescribed by CAL. LABOR CODE § 201.

DEFENDANTS

4. TOWNSEND is informed and believes, and based upon that information and belief alleges, that Defendant RO-AL, INC. is, and at all times mentioned was:

- (a) A California corporation authorized to conduct business, and actually conducting business, in Los Angeles County, California;
- (b) The owner and operator of a restaurant known as Patrick Molloy's;

- 1 (c) Along with PATRICK MOLLOY BASTIAN, ALICE BASTIAN
2 HAHN, FRED HAHN and DOES 1 through 50, inclusive, the former
3 joint employer of TOWNSEND, and the current or former joint
4 employer of the putative Class members, and all aggrieved employees
5 as RO-AL, INC., PATRICK MOLLOY BASTIAN, ALICE BASTIAN
6 HAHN, FRED HAHN, and DOES 1 through 50 controlled
7 TOWNSEND's, the putative Class members', and all aggrieved
8 employees' wages, hours, working conditions, and how each
9 employee was paid;
- 10 (d) Paid TOWNSEND, the putative Class members, and all aggrieved
11 employees an hourly rate,
- 12 (e) Failed to properly pay TOWNSEND, the putative Class members, and
13 all aggrieved employees for all time worked and for missed meal and
14 rest periods; failed to provide TOWNSEND, the putative Class
15 members, and all aggrieved employees with accurate itemized wage
16 statements; failed to reimburse TOWNSEND, the putative Class
17 members, and all aggrieved employees for business expenses incurred
18 in the course of their employment; failed to provide TOWNSEND, the
19 putative class, and all aggrieved employees with adequate seating; and
20 failed to pay TOWNSEND, the Putative Class members, and all
21 aggrieved employees for wages due upon termination. Each of these
22 transgressions violated the CAL. LAB. CODE.; and,
- 23 (f) Improperly received and distributed gratuities left for TOWNSEND,
24 the putative Class members, and all aggrieved employees by
25 customers.

26 5. TOWNSEND is informed and believes, and based upon that information and
27 belief alleges, that Defendant PATRICK MOLLOY BASTIAN, is, and at all times
28 mentioned was:

- 1 (a) An individual who resides in the County of Los Angeles, California;
- 2 (b) The owner and operator of a restaurant known as Patrick Molloy's;
- 3 (c) Along with RO-AL, INC., ALICE BASTIAN HAHN, FRED HAHN,
- 4 and DOES 1 through 50, inclusive, the former joint employer of
- 5 TOWNSEND, and the current or former joint employer of the putative
- 6 Class members and all aggrieved employees as RO-AL, INC., ALICE
- 7 BASTIAN HAHN, FRED HAHN, and DOES 1 through 50 controlled
- 8 TOWNSEND's, the putative Class members' and all aggrieved
- 9 employees' wages, hours, working conditions, and how each
- 10 employee was paid;
- 11 (d) Paid TOWNSEND, all Class members, and all aggrieved employees
- 12 an hourly rate;
- 13 (e) Failed to properly pay TOWNSEND, the putative Class members, and
- 14 all aggrieved employees for all time worked and for missed meal and
- 15 rest periods; failed to provide TOWNSEND, the putative Class
- 16 members, and all aggrieved employees with accurate itemized wage
- 17 statements; failed to reimburse TOWNSEND, the putative Class
- 18 members, and all aggrieved employees for business expenses incurred
- 19 in the course of their employment; failed to provide TOWNSEND, the
- 20 putative class, and all aggrieved employees with adequate seating; and
- 21 failed to pay TOWNSEND, the Putative Class members, and all
- 22 aggrieved employees for wages due upon termination. Each of these
- 23 transgressions violated the CAL. LAB. CODE.; and,
- 24 (f) Improperly received and distributed gratuities left for TOWNSEND,
- 25 the putative Class members, and all aggrieved employees by
- 26 customers.
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1 6. TOWNSEND is informed and believes, and based upon that information and
2 belief alleges, that Defendant ALICE BASTIAN HAHN, is, and at all times mentioned
3 was:

- 4 (a) An individual who resides in the County of Los Angeles, California;
5 (b) The owner and operator of a restaurant known as Patrick Molloy's;
6 (c) Along with RO-AL, INC., PATRICK MOLLOY BASTIAN, FRED
7 HAHN, and DOES 1 through 50, inclusive, the former joint employer
8 of TOWNSEND, and the current or former joint employer of the
9 putative Class members and all aggrieved employees as RO-AL,
10 INC., PATRICK MOLLOY BASTIAN, FRED HAHN, and DOES 1
11 through 50 controlled TOWNSEND's, the putative Class members',
12 and all aggrieved employees' wages, hours, working conditions, and
13 how each employee was paid;
14 (d) Paid TOWNSEND, all Class members, and all aggrieved employees
15 an hourly rate;
16 (e) Failed to properly pay TOWNSEND, the putative Class members, and
17 all aggrieved employees for all time worked and for missed meal and
18 rest periods; failed to provide TOWNSEND the putative Class
19 members, and all aggrieved employees with accurate itemized wage
20 statements; failed to reimburse TOWNSEND, the putative Class
21 members, and all aggrieved employees for business expenses incurred
22 in the course of their employment; failed to provide TOWNSEND, the
23 putative class, and all aggrieved employees with adequate seating; and
24 failed to pay TOWNSEND, the Putative Class members, and all
25 aggrieved employees for wages due upon termination. Each of these
26 transgressions violated the CAL. LAB. CODE.; and,
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- 1 (f) Improperly received and distributed gratuities left for TOWNSEND,
2 the putative Class members, and all aggrieved employees by
3 customers.

4 7. TOWNSEND is informed and believes, and based upon that information and
5 belief alleges, that Defendant FRED HAHN, is, and at all times mentioned was:

- 6 (a) An individual who resides in the County of Los Angeles, California;
7 (b) The owner and operator of a restaurant known as Patrick Molloy's;
8 (c) Along with RO-AL, INC., PATRICK MOLLOY BASTIAN, ALICE
9 BASTIAN HAHN, and DOES 1 through 50, inclusive, the former
10 joint employer of TOWNSEND, and the current or former joint
11 employer of the putative Class members and all aggrieved employees
12 as RO-AL, INC., PATRICK MOLLOY BASTIAN, ALICE BASTIAN
13 HAHN, and DOES 1 through 50 controlled TOWNSEND's, the
14 putative Class members', and all aggrieved employees' wages, hours,
15 working conditions, and how each employee was paid;
16 (d) Paid TOWNSEND, all Class members, and all aggrieved employees
17 an hourly rate;
18 (e) Failed to properly pay TOWNSEND, the putative Class members, and
19 all aggrieved employees for all time worked and for missed meal and
20 rest periods; failed to provide TOWNSEND, the putative Class
21 members, and all aggrieved employees with accurate itemized wage
22 statements; failed to reimburse TOWNSEND, the putative Class
23 members, and all aggrieved employees for business expenses incurred
24 in the course of their employment; failed to provide TOWNSEND, the
25 putative class, and all aggrieved employees with adequate seating; and
26 failed to pay TOWNSEND the Putative Class members, and all
27 aggrieved employees for wages due upon termination. Each of these
28 transgressions violated the CAL. LAB. CODE.; and,

1 (f) Improperly received and distributed gratuities left for TOWNSEND,
2 the putative Class members, and all aggrieved employees by
3 customers.

4 8. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendant DOES 1 through 50, inclusive, are
6 unknown to the Plaintiff, who therefore sues these Defendants by those fictitious names
7 under CAL. CIV. PROC. § 474. Plaintiff will seek leave to amend his Complaint to allege the
8 true names and capacities of DOES 1 through 50, inclusive, when they are ascertained.

9 9. Plaintiff is informed and believes, and based upon that information and belief
10 alleges, that Defendant DOES 1 through 50 are persons, corporations or other entities
11 which reside in, or are otherwise doing, business in the State of California. Each of the
12 Defendant DOES 1 through 50 was the managerial agent, employee, predecessor,
13 successor, joint-venturers, co-conspirator, alter ego and/or representative of one or more of
14 the other Defendants named herein, and acted with permission, authorization and/or
15 ratification and consent of other Defendants.

16 10. Plaintiff is informed and believes, and based upon that information and belief
17 alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
18 inclusive, are responsible in some manner for one or more of the events and happenings
19 that proximately caused the injuries and damages hereinafter alleged.

20 11. Plaintiff is informed and believes, and based upon that information and belief
21 alleges, that the Defendants named in this Complaint, including DOES 1 through 50,
22 inclusive, are, and at all times mentioned herein were, the agents, servants, and/or
23 employees of each of the other Defendants, and that each Defendant was acting within the
24 course of scope of his, hers or its authority as the agent, servant and/or employee of each of
25 the other Defendants. Consequently, all the Defendants are jointly and severally liable to
26 the Plaintiff, and the putative Class, for the damages sustained as a proximate result of their
27 conduct.
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12. Plaintiff is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, included DOES 1 through 50, inclusive, knowingly and willfully acted in concert, conspired and agreed together among themselves and entered into a combination and systemized campaign of activity to *inter alia* damage Plaintiff, the putative Class, and all aggrieved employees and to otherwise consciously and/or recklessly act in derogation of Plaintiff's rights, and the trust reposed by Plaintiff, the putative Class, and all aggrieved employees in each of the Defendants, the acts being negligently and/or intentionally inflicted. Their conspiracy, and Defendants' concerted actions, were such that, to Plaintiff's information and belief, and to all appearances, Defendants represented a unified body so that the actions of one Defendant were accomplished in concert with, and with the knowledge, ratification, authorization and approval of each of the other Defendants.

ALTER EGO ALLEGATIONS

13. Plaintiff is informed and believes, and based upon that information and belief alleges, that;

(a) RO-AL, INC., and DOES 1 through 50, are, and at all relevant times were, mere shells without capital, assets, stock or stockholders;

(b) Defendants RO-AL, INC, and DOES 1 through 50 are, and at all relevant times were, the alter ego of Defendants PATRICK MOLLOY BASTIAN, ALICE BASTIAN HAHN, FRED HAHN; and DOES 1 through 50, inclusive, and each of them, who were the controlling shareholders, officers, and directors of RO-AL, INC.; and DOES 1 through 50;

(c) There is, and at all relevant times was, a unity of interest and/or ownership between all of these Defendants so that any individuality or separateness between them has ceased to exist in that RO-AL, INC., and DOES 1 through 50, inclusive were and are under their control and domination; and,

(d) RO-AL, INC., and DOES 1 through 50, inclusive are, and at all relevant times were, completely controlled, dominated, managed and operated by PATRICK

1 MOLLOY BASTIAN, ALICE BASTIAN HAHN, FRED HAHN, and Defendants DOES 1
2 through 50, inclusive, and each of them, so that RO-AL, INC., and DOES 1 through 50
3 were mere shells, instrumentality and/or conduit through which each of these Defendants
4 conducted some or all of their/its business. Adherence to the fiction of the separate
5 existence of RO-AL, INC., and DOES 1 through 50, inclusive as entities distinct from
6 PATRICK MOLLOY BASTIAN, ALICE BASTIAN HAHN, FRED HAHN, Defendants
7 DOES 1 through 50, inclusive, or any of them, would permit an abuse of the corporate
8 privilege and sanction fraud or promote injustice in that, among other things, it would
9 enable each of these Defendants to avoid liability and to defraud his, her or its creditors,
10 the effect of which would be to render each Defendant financially unable to respond to a
11 monetary judgment awarded against each or any of them in the action.

12 14. RO-AL, INC.; PATRICK MOLLOY BASTIAN; ALICE BASTIAN HAHN;
13 FRED HAHN; and, DOES 1 through 50 are collectively referred to as “DEFENDANTS”
14 throughout this Complaint.

15 15. TOWNSEND and all persons employed by DEFENDANTS in California
16 who received at least one wage statement are “aggrieved employees” as defined by CAL.
17 LAB. CODE § 2699 in that they are all current or former employees of DEFENDANTS, and
18 one or more of the alleged violations was committed against them.

20 III.

21 CLASS ALLEGATIONS

22 A. The Definition Of The Class

23 16. The Class (“the Class”) consists of:

24 All persons who are or were hourly paid employees of RO-AL, INC, or
25 PATRICK MOLLOY BASTIAN, ALICE BASTIAN HAHN, and / or
26 FRED HAHN, in the State of California, at any time during the period
27 commencing on the date that is within four (4) years prior to the filing
28 of this Complaint and continuing thereafter (the “Class Period”).

1 **B. Maintenance Of The Action**

2 17. TOWNSEND brings the action individually on behalf of all similarly situated
3 persons under CAL. BUS. & PROF. CODE §§ 17203 and 17204 and CAL. CIV. PROC. CODE §
4 382.

5 **C. The Class Requisites**

6 18. At all material times, TOWNSEND was a member of the putative Class.

7 19. The Class action meets the statutory prerequisites for maintaining a class
8 action under CAL. CIV. PROC. CODE § 382, in that:

9 (a) The persons who comprise the Class are so numerous that the joinder
10 of all those persons is impracticable and the disposition of their
11 claims as a Class will benefit the parties and the court;

12 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
13 issues that are raised in this Complaint are common to the Class and
14 will apply uniformly to every Class member;

15 (c) The claims of the representative Plaintiff are typical of the claims of
16 each Class member. Plaintiff, like all other Class members, has
17 sustained damages arising from DEFENDANTS' violations of the
18 laws of the State of California. Plaintiff, and the putative Class
19 members, were and are similarly or identically harmed by the same
20 unlawful, deceptive, unfair, systematic and pervasive pattern of
21 misconduct engaged in by the DEFENDANTS;

22 (d) The representative Plaintiff has, and will continue to, fairly and
23 adequately represent and protect the interests of the Class, and has
24 retained counsel who is competent and experienced in class action
25 litigation. There are no material conflicts between the claims of the
26 representative Plaintiff and the Class members that would make class
27 certification inappropriate. Counsel for the Class will vigorously
28 assert the claims of all Class members.

1 20. The persons who comprise the Class are so numerous that joining all of them
2 is impracticable, and jointly adjudicating their claims will benefit the parties and the Court.
3 Plaintiff's claims are typical of the claims of the Class that Plaintiff seeks to represent.
4 Plaintiff will fairly and adequately protect the interests of the Class that he seeks to
5 represent. Plaintiff does not have any interests that are antagonistic to the Class that he
6 seeks to represent. Counsel for the Plaintiff is experienced, qualified and generally able to
7 conduct complex class action litigation.

8 21. The court should permit the action to be maintained as a class action under
9 CAL. CIV. PROC. CODE § 382 because:

- 10 (a) The questions of law and fact common to the Class predominate over
11 any question affecting only individual members;
- 12 (b) A class action is superior to any other available method for fairly and
13 efficiently adjudicating the claims of the Class;
- 14 (c) The Class members are so numerous that it is impractical to bring all
15 of them before the Court;
- 16 (d) Plaintiff and the other Class members will not be able to obtain
17 effective and economic legal redress unless the action is maintained as
18 a class action;
- 19 (e) There is a community of interest in obtaining appropriate legal and
20 equitable relief for the statutory violations, and in obtaining adequate
21 compensation for the damages and injuries for which DEFENDANTS
22 are responsible in an amount sufficient to adequately compensate the
23 Class members;
- 24 (f) Without Class certification, the prosecution of separate actions by
25 individual Class members would create a risk of:
 - 26 i. Inconsistent or varying adjudications for individual Class
27 members that would establish incompatible standards of
28 conduct for DEFENDANTS; and/or,

- 1 ii. Adjudications for individual Class members that would, as a
2 practical matter, dispose of other non-party members' interests,
3 or that would substantially impair or impede the non-parties'
4 ability to protect their interests, by, for example, potentially
5 exhausting the funds available from DEFENDANTS; and,
6 (g) DEFENDANTS have acted or refused to act on grounds generally
7 applicable to the Class, making final injunctive relief appropriate for
8 the Class as a whole.

9 22. Plaintiff contemplates eventually issuing notice to the proposed Class
10 members that would set forth the subject and nature of the action. The DEFENDANTS'
11 own business records may be utilized for assisting to prepare and issue the contemplated
12 notice. To the extent that any further notices may be required, Plaintiff would contemplate
13 using additional media and/or mailings.

14 IV.

15 THE CONDUCT

16 23. DEFENDANTS operate a bar and restaurant named Patrick Molloy's, which
17 serves food in Los Angeles County, California. Defendants employed TOWNSEND as a
18 server from on or about May 2018 to on or about October 2018.

19 24. DEFENDANTS' business requires the use of "non-exempt" employees as
20 defined by the California Labor Code and IWC Wage Order No. 5-2001 (as amended)
21 including, but not limited to, cooks, prep cooks, dishwashers, janitors, and a wait staff /
22 cashiers.

23 25. During TOWNSEND's the putative class', and all aggrieved employees'
24 employment, DEFENDANTS failed to properly pay TOWNSEND, the putative Class, and
25 all aggrieved employees for overtime hours worked.

26 26. CAL. LAB. CODE § 510 provides that employees in California shall not be
27 employed more than eight (8) hours in any workday or forty (40) hours in a workweek
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1 unless they receive additional compensation beyond their regular wages in amounts
2 specified by law.

3 27. During TOWNSEND's, the putative Class', and all aggrieved employees'
4 employment, DEFENDANTS failed to properly pay TOWNSEND, the putative Class, and
5 all aggrieved employees, minimum wages for all hours worked.

6 28. CAL. LAB. CODE. §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require
7 employers to pay employees the minimum wage fixed by the California Industrial Welfare
8 Commission. The payment of a lesser wage than the minimum so fixed is unlawful.

9 29. DEFENDANTS refused to allow TOWNSEND, the putative Class, and all
10 aggrieved employees to take code complaint meal periods.

11 30. DEFENDANTS typically completely failed to provide TOWNSEND, the
12 putative Class, all aggrieved employees with compliant thirty (30) minute meal periods
13 during shifts in excess of five (5) hours. Where meal periods were provided, they were
14 shorter in duration than 30 minutes or were interrupted. Additionally, TOWNSEND, the
15 putative Class, and all aggrieved employees were not allowed to leave DEFENDANTS'
16 premises during these times. As such, DEFENDANTS effectively maintained control over
17 TOWNSEND, the putative Class, and all aggrieved employees during the meal periods that
18 were provided. On each day where a compliant thirty (30) minute meal period was not
19 provided to TOWNSEND, the putative Class, and all aggrieved employees DEFENDANTS
20 failed to pay TOWNSEND, the putative Class, and all aggrieved employees one additional
21 hour of pay at each employee's regular rate of pay.

22 31. DEFENDANTS refused to allow TOWNSEND, the putative Class, and all
23 aggrieved employees to take code complaint rest periods.

24 32. DEFENDANTS did not provide TOWNSEND, the putative Class, and all
25 aggrieved employees a 10-minute net rest period for every four (4) hours or major fraction
26 thereof worked. Where rest periods were provided, they were shorter in duration than 10
27 minutes, were interrupted, or were not provided every four (4) hours or major fraction
28 thereof worked. Additionally, employees were not allowed to leave DEFENDANTS

1 premises during their rest periods. DEFENDANTS effectively maintained control over
2 TOWNSEND, the putative Class, and all aggrieved employees during rest periods that were
3 provided. On each day where compliant ten (10) minute rest periods were not provided to
4 TOWNSEND, the putative Class, and all aggrieved employees DEFENDANTS failed to
5 pay TOWNSEND, the putative Class, and all aggrieved employees one additional hour of
6 pay at each employee's regular rate of pay.

7 33. Under California law, an employee who works more than 4 hours or major
8 fraction thereof, is entitled to a compensated rest period of 10 minutes. An employee who
9 works more than 5 hours in a day is entitled to a meal period of at least 30 minutes, and a
10 second meal period of at least 30 minutes if he or she works more than 10 hours in a
11 workday. (CAL. LAB. CODE § 512(a).) An employer that fails to provide a rest or meal
12 period that satisfies the requirements of the applicable IWC Wage Order 5-2001 (as
13 amended) must pay a premium to the employee of one additional hour of pay at the
14 employee's regular rate for each day that a meal period was not provided. (CAL. LAB.
15 CODE § 226.7(b).)

16 34. TOWNSEND, the putative Class, and all aggrieved employees were not
17 properly paid for overtime hours worked, for minimum wages, and were not provided with
18 premium payments for missed rest and meal periods. Thus, DEFENDANTS' wage
19 statements did not conform with CAL. LAB. CODE § 226. The wage statements failed to
20 accurately indicate the hours worked, including minimum wages and overtime. The wage
21 statements also failed to include the meal and rest-break premium payments that should
22 have been paid to TOWNSEND, the putative Class members, and all aggrieved employees.

23 35. TOWNSEND, the putative Class, and all aggrieved employees were not
24 properly reimbursed by DEFENDANTS for all necessary expenditures incurred in each
25 employees' course and scope of employment, as required by CAL. LAB. CODE §§ 2800 and
26 2802. Necessary business-related expenses and costs that were incurred by TOWNSEND,
27 the putative Class, and all aggrieved employees but not fully reimbursed by
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1 DEFENDANTS, include, but were not limited to the purchase of uniforms required by
2 DEFENDANTS.

3 36. CALIFORNIA LABOR CODE § 1198 makes it illegal to employ an employee
4 under conditions of labor that are prohibited by the applicable wage order. California Code
5 of Regulations, Title 8, section 11050(14)(A) provides that all working employees shall be
6 provided with suitable seats when the nature of the work reasonably permits the use of
7 seats.” California Code of Regulations, Title 8, section 11050(14)(B) provides, “When
8 employees are not engaged in the active duties of their employment and the nature of the
9 work requires standing, an adequate number of suitable seats shall be placed in reasonable
10 proximity to the work area and employees shall be permitted to use such seats when it does
11 not interfere with the performance of their duties.”

12 37. DEFENDANTS did not provide TOWNSEND, the putative Class members,
13 and all aggrieved employees with an adequate number of suitable seats in reasonable
14 proximity to the work area that could be used when the seats would not interfere with the
15 performance of the duties. As a result, TOWNSEND, the putative class, and all aggrieved
16 employees are entitled to recover all remedies available for violations of CALIFORNIA
17 LABOR CODE § 1198 and California Code of Regulations, Title 8, section 11050(14).

18 38. DEFENDANTS instituted a tip-pooling policy that allowed for managers to
19 take gratuities left by DEFENDANTS’ customers for TOWNSEND, the putative Class, and
20 all aggrieved employees.

21 39. CAL. LAB. CODE § 351 provides that no employer or agent shall collect, take,
22 or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
23 patron, or deduct any amount from wages due an employee on account of a gratuity, or
24 require an employee to credit the amount, or any part thereof, of a gratuity against and as a
25 part of the wages due the employee from the employer. Every gratuity is declared to be the
26 sole property of the employee or employees to whom it was paid, given, or left for.

27 40. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid
28 wages are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an

1 employee not having a written contract for a definite period is terminated, his or her wages
2 become immediately due and payable. CAL. LAB. CODE § 203 (a) provides that “If an
3 employer willfully fails to pay, without abatement or reduction, in accordance with
4 Sections [201 and 202], any wages of an employee who is discharged or who quits, the
5 wages of the employee shall continue as a penalty from the due date thereof at the same
6 rate until paid or until an action therefore is commenced; but the wages shall not continue
7 for more than 30 days.”

8 41. Under California Labor Code § 203, TOWNSEND, the putative Class
9 members, and all aggrieved employees are entitled to one day's wages for each day they
10 were not timely paid all wages due, up to a maximum of 30 days’ wages. Because
11 DEFENDANTS never paid overtime or meal and rest period wages to TOWNSEND, the
12 putative Class, and all aggrieved employees, each of these individuals whose employment
13 has been terminated during the applicable statutory period, is entitled to 30 days’ wages.

14 **FIRST CAUSE OF ACTION**
15 **FOR FAILURE TO PAY OVERTIME COMPENSATION AND LIQUIDATED**
16 **DAMAGES**

17 [CAL. LAB. CODE §§ 510, 1194, 1194.2 and 1198]

18 (By TOWNSEND, on Her Own Behalf, on Behalf of All Employees
19 Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All
20 DEFENDANTS)

21 42. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1
22 through 41, inclusive, of this Complaint and they are incorporated herein by this reference.

23 43. Under the applicable IWC Wage Order 5-2001 (as amended),
24 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
25 aggrieved employees.

26 44. CAL. LAB. CODE § 510 provides that employees in California shall not be
27 employed more than eight (8) hours in any workday or forty (40) hours in a workweek
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1 unless they receive additional compensation beyond their regular wages in amounts
2 specified by law.

3 45. CAL. LAB. CODE § 1194 establishes an employee's right to recover unpaid
4 overtime compensation, interest thereon, together with the costs of suit, and attorneys fees.
5 CAL. LAB. CODE § 1198 states that the employment of an employee for longer hours than
6 those fixed by the Industrial Welfare Commission is unlawful.

7 46. CAL. LAB. CODE § 1194.2 establishes an employee's right to recover
8 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
9 in an action for payment of a wage less than the minimum wage fixed by the Industrial
10 Welfare Commission or by statute.

11 47. At all times relevant hereto, TOWNSEND, the putative Class, and all
12 aggrieved employees worked more than eight (8) hours in a workday and/or forty (40)
13 hours in a workweek, as employees of DEFENDANTS. Further, at all times relevant
14 hereto, TOWNSEND, the putative Class, and all aggrieved employees were paid on an
15 hourly basis.

16 48. At all times relevant hereto, DEFENDANTS failed to pay TOWNSEND, the
17 putative Class, and all aggrieved employees overtime compensation for the hours they
18 worked in excess of maximum hours permissible by law as required by CAL. LAB. CODE §§
19 510, 1194 and 1198.

20 49. DEFENDANTS acted intentionally, oppressively, and maliciously toward
21 TOWNSEND, the putative Class, and all aggrieved employees with a conscious disregard
22 of their rights, or the consequences to them, with the intent of depriving them of property
23 and legal rights and otherwise causing them injury. By virtue of DEFENDANTS' unlawful
24 failure to pay overtime wages, TOWNSEND, the putative Class, and all aggrieved
25 employees have suffered, and will continue to suffer, damages in amounts that are presently
26 unknown to them but which exceed the jurisdictional limits of the court and which will be
27 ascertained according to proof at trial
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1 50. TOWNSEND, individually, on behalf of the putative Class, and on behalf of
2 all aggrieved employees seeks recovery of overtime compensation according to proof,
3 interest, attorney's fees and costs under CAL. LAB. CODE §§ 218.5 and 1194(a), as well as
4 the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by
5 the CAL. LAB. CODE and/or other statutes. TOWNSEND individually, on behalf of the
6 putative Class, and on behalf of all aggrieved employees, also seeks recovery of liquidated
7 damages as provided by CAL. LAB. CODE § 1194.2, and reasonable attorneys' fees and costs
8 under CAL. LAB. CODE §§ 218.5 and 1194.

9 **SECOND CAUSE OF ACTION**

10 **FOR FAILURE TO PAY MINIMUM WAGES AND LIQUIDATED DAMAGES**

11 **[CAL. LAB. CODE §§ 1182.12, 1194; 1194.2; 1197; 1197.1; 1198]**

12 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**

13 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**

14 **DEFENDANTS)**

15 51. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1
16 through 50, inclusive, of this Complaint and they are incorporated herein by this reference.

17 52. Under the applicable IWC Wage Order 5-2001 (as amended),
18 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
19 aggrieved employees.

20 53. CAL. LAB. CODE §§ 1182.12, 1197, and 1197.1 require employers to pay
21 employees the minimum wage fixed by the California Industrial Welfare Commission. The
22 payment of a lesser wage than the minimum so fixed is unlawful.

23 54. Compensable work time is defined in Industrial Wage Order No. 5 as "the
24 time during which an employee is subject to the control of an employer, and includes all
25 the time the employee is suffered or permitted to work, whether or not required to do so."
26 (8 CAL. CODE REGS. §§ 11050(2)(K) [defining "Hours Worked"]).

27 55. CAL. LAB. CODE § 1194 establishes an employee's right to recover unpaid
28 wage compensation, interest thereon, together with the costs of suit, and attorneys' fees.

1 56. CAL. LAB. CODE § 1194.2 establishes an employee's right to recover
2 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
3 in an action for payment of a wage less than the minimum wage fixed by the Industrial
4 Welfare Commission or by statute.

5 57. At all times relevant hereto, TOWNSEND, the putative Class, and all
6 aggrieved employees, were paid by DEFENDANTS on an hourly basis. Additionally,
7 TOWNSEND, the putative Class, and all aggrieved employees, did not reside at the place
8 of employment.

9 58. During TOWNSEND's, the putative Class,' and all aggrieved employees',
10 employment, DEFENDANTS failed to properly pay TOWNSEND, the putative Class, and
11 all aggrieved employees for all hours worked at the legal minimum wage.

12 59. DEFENDANTS acted intentionally, oppressively, and maliciously toward
13 TOWNSEND, the putative Class, and all aggrieved employees with a conscious disregard
14 of them, or the consequences to them, with the intent of depriving them of property and
15 legal rights and otherwise causing them injury. By virtue of DEFENDANTS' unlawful
16 failure to pay wages, TOWNSEND, the putative Class, and all aggrieved employees have
17 suffered, and will continue to suffer damages in an amount that is presently unknown to
18 them but which exceeds the jurisdictional limits of the court and which will be ascertained
19 according to proof at trial.

20 60. TOWNSEND, individually, on behalf of the putative Class, and on behalf of
21 all aggrieved employees, seeks to recover minimum wages according to proof, interest, and
22 the assessment of all applicable statutory penalties against DEFENDANTS, in a sum as
23 provided by the CAL. LAB. CODE and/or other statutes. TOWNSEND, individually, on
24 behalf of the putative Class, and on behalf of all aggrieved employees seeks to recover
25 liquidated damages as provided by CAL. LAB. CODE § 1194.2, and reasonable attorneys'
26 fees and costs.

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THIRD CAUSE OF ACTION

FOR FAILURE TO PROVIDE MEAL PERIODS

[CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11050]

(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees

**Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All
DEFENDANTS)**

61. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1 through 60, inclusive, of this Complaint and they are incorporated herein by this reference.

62. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all aggrieved employees.

63. CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11050(11)(A), provide that 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.

64. CAL. LAB. CODE § 226.7 and 8 CAL. CODE REGS. § 11050(11)(D), provide that if an employer fails to provide an employee a meal period in accordance with the section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

65. DEFENDANTS regularly and repeatedly failed to provide TOWNSEND, the putative Class, and all aggrieved employees with compliant thirty (30) minute meal periods during shifts in excess of five (5) hours. Where meal periods were provided, they were shorter in duration than 30 minutes or were interrupted. Additionally, TOWNSEND, the putative Class, and all aggrieved employees were not allowed to leave DEFENDANTS' premises during these times. DEFENDANTS effectively maintained control over TOWNSEND, the putative Class, and all aggrieved employees during the meal periods that were provided. On each day where a compliant thirty (30) minute meal period was not provided to TOWNSEND, the putative Class, and all aggrieved employees, DEFENDANTS failed to pay TOWNSEND, the putative Class, and all aggrieved

employees one additional hour of pay at each employee's regular rate of pay.

66. DEFENDANTS have intentionally and improperly denied meal periods to TOWNSEND, the putative Class, and all aggrieved employees in violation of CAL. LAB. CODE §§ 226.7 and 512 and 8 CAL. CODE REGS. § 11050(11)(A) and other applicable regulations and statutes.

67. By virtue of the DEFENDANTS' unlawful failure to provide meal periods to TOWNSEND, the putative Class, and all aggrieved employees, TOWNSEND, the putative Class, and all aggrieved employees have suffered, and will continue to suffer, damages in amounts that are presently unknown to TOWNSEND, the putative Class, and all aggrieved employees but which damages exceed the jurisdictional limits of the court and which will be ascertained according to proof at trial.

68. TOWNSEND is informed and believes, and based upon that information and belief alleges, that DEFENDANTS purposely elected not to provide meal periods to its hourly paid employees. DEFENDANTS acted intentionally, oppressively and maliciously toward TOWNSEND, the putative Class, and all aggrieved employees with a conscious disregard of their rights, or the consequences to TOWNSEND, the putative Class, and all aggrieved employees with the intent of depriving them of property and legal rights and otherwise causing TOWNSEND, the putative Class, and all aggrieved employees injury.

69. TOWNSEND, individually, on behalf of the putative Class, and on behalf of all aggrieved employees, requests recovery of meal-period compensation under CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. § 11050(11)(D), from DEFENDANTS, in a sum as provided by the CAL. LAB. CODE and/or other statutes. Further, TOWNSEND, individually, on behalf of the putative class, and on behalf of all aggrieved employees, seeks recovery of reasonable attorneys' fees and costs pursuant to CAL. LAB. CODE §§ 218.5 and 1194.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REST PERIODS

[CAL. LAB. CODE §§ 226.7 and 512, and 8 CAL. CODE REGS. § 11050]

**(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees
Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All
DEFENDANTS)**

70. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1 through 69, inclusive, of this Complaint and they are incorporated herein by this reference.

71. Pursuant to the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all aggrieved employees.

72. CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. § 11050(12)(A), provides that employers shall authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, of work.

73. CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. § 11050(12)(B), provide that if an employer fails to provide an employee with rest periods in accordance with those statutes, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided.

74. DEFENDANTS have intentionally and improperly denied rest periods to TOWNSEND, the putative Class, and all aggrieved employees in violation of CAL. LAB. CODE §§ 226.7 and 512 and 8 CAL. CODE OF REGS. § 11050(12)(A).

75. At all times relevant hereto, TOWNSEND, the putative Class, and all aggrieved employees have worked more than four hours in a workday.

76. At all times relevant hereto, DEFENDANTS failed to provide rest periods to TOWNSEND, the putative Class, and all aggrieved employees as required by CAL. LAB. CODE §§ 226.7 and 8 CAL. CODE REGS. § 11050(12)(A).

77. DEFENDANTS did not provide TOWNSEND, the putative Class, and all aggrieved employees a 10-minute net rest period for every four (4) hours or major fraction

1 thereof worked. Where rest periods were provided, they were shorter in duration than 10
2 minutes, were interrupted, or were not provided every four (4) hours or major fraction
3 thereof worked. Additionally, employees were not allowed to leave DEFENDANTS
4 premises during their rest periods. DEFENDANTS effectively maintained control over
5 TOWNSEND, the putative Class, and all aggrieved employees during rest periods that were
6 provided. On each day where compliant ten (10) minute rest periods were not provided to
7 TOWNSEND, the putative Class, and all aggrieved employees, DEFENDANTS failed to
8 pay TOWNSEND, the putative Class, and all aggrieved employees one additional hour of
9 pay at each employee's regular rate of pay.

10 78. By virtue of the DEFENDANTS' unlawful failure to provide rest periods to
11 the TOWNSEND, the putative Class, and all aggrieved employees, TOWNSEND the
12 putative Class, and all aggrieved employees have suffered, and will continue to suffer,
13 damages in amounts that are presently unknown to TOWNSEND, the putative Class, and
14 all aggrieved employees but which exceed the jurisdictional limits of the Court and which
15 will be ascertained according to proof at trial.

16 79. TOWNSEND is informed and believes, and based upon that information and
17 belief alleges, that DEFENDANTS knew or should have known that TOWNSEND, the
18 putative Class, and all aggrieved employees were entitled to rest periods and purposely
19 elected not to provide rest periods. DEFENDANTS acted intentionally, oppressively and
20 maliciously toward TOWNSEND, the putative Class, and all aggrieved employees with a
21 conscious disregard of their rights, or the consequences to TOWNSEND, the putative
22 Class, and all aggrieved employees with the intent of depriving TOWNSEND, the putative
23 Class, and all aggrieved employees of property and legal rights and otherwise causing
24 TOWNSEND, the putative Class, and all aggrieved employees injury.

25 80. TOWNSEND, individually, and on behalf of the putative Class and all
26 aggrieved employees requests recovery of rest-period compensation pursuant to CAL. LAB.
27 CODE §§ 226.7 and 8 CAL. CODE REGS. § 11050(12)(B), as well as the assessment of any
28 statutory penalties against DEFENDANTS in a sum as provided by the CAL. LAB. CODE

1 and/or other statutes. Further, TOWNSEND, individually, on behalf of the putative Class,
2 and on behalf of all aggrieved employees seeks recovery of reasonable attorneys' fees and
3 costs under CAL. LAB. CODE §§ 218.5 and 1194.

4 **FIFTH CAUSE OF ACTION**
5 **FOR FAILURE TO PROVIDE ITEMIZED STATEMENTS**

6 **[CAL. LAB. CODE § 226]**

7 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**
8 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**
9 **DEFENDANTS)**

10 81. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1
11 through 80, inclusive, of this Complaint and they are incorporated herein by this reference.

12 82. Under the applicable IWC Wage Order 5-2001 (as amended),
13 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
14 aggrieved employees.

15 83. Throughout the relevant time period, DEFENDANTS intentionally failed to
16 furnish to TOWNSEND, the putative Class, and all aggrieved employees, upon the payment
17 of wages, itemized statements accurately showing the total number of hours worked, the
18 applicable hourly rates in effect during each pay period, the corresponding hours worked at
19 each hourly rate, the resulting gross and net wages earned, and the resulting deductions
20 made.

21 84. TOWNSEND, the putative Class, and all aggrieved employees were damaged
22 by these failures because, among other things, the failures led them to believe that they
23 were not entitled to be paid for all hours worked and overtime even though they were so
24 entitled, and because these failures hindered them from determining the amounts of wages
25 and overtime compensation owed to them.

26 85. TOWNSEND, the putative Class, and all aggrieved employees are entitled to
27 the amounts provided in CAL. LAB. CODE § 226(e), plus costs and attorneys' fees.

28 86. TOWNSEND, individually, on behalf of the putative Class, and on behalf of

1 all aggrieved employees, seeks recovery of penalties under CAL. LAB. CODE § 226(e) and/or
2 other statutes. Further, TOWNSEND, individually, on behalf of the putative Class, and on
3 behalf of all aggrieved employees seeks recovery of reasonable attorneys' fees and costs.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

6 **[CAL. LAB. CODE §§ 2800 and 2802]**

7 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**

8 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**

9 **DEFENDANTS)**

10 87. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1
11 through 86, inclusive, of this Complaint and they are incorporated herein by this reference.

12 88. Under the applicable IWC Wage Order 5-2001 (as amended),
13 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
14 aggrieved employees.

15 89. CAL. LAB. CODE sections 2800 and 2802 provide that an employer must
16 reimburse employees for all necessary expenditures incurred in an employee's course and
17 scope of employment.

18 90. TOWNSEND, the putative Class, and all aggrieved employees incurred
19 necessary business-related expenses and costs that were not fully reimbursed by
20 DEFENDANTS, including, but not limited to uniforms. DEFENDANTS have a policy of
21 requiring each of its employees to wear a specific uniform. DEFENDANTS, however, did
22 not reimburse TOWNSEND, the putative Class, and all aggrieved employees for the cost of
23 these necessary items.

24 91. DEFENDANTS have intentionally and willfully failed to fully reimburse
25 TOWNSEND, the putative Class, and all aggrieved employees for necessary business-
26 related expenses and costs in violation of CAL. LAB. CODE sections 2800 and 2802.

27 92. TOWNSEND, individually, on behalf of the putative Class, and on behalf of
28 all aggrieved employees, seeks recovery of business-related expenses incurred during the

1 course and scope of each employees' employment with DEFENDANTS, plus interest,
2 under California Labor Code sections 2800 and 2802. Further, TOWNSEND, individually,
3 on behalf of the putative Class, and on behalf of all aggrieved employees seeks recovery of
4 reasonable attorneys' fees and costs.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ADEQUATE SEATING**

7 **[CAL. LAB. CODE § 1198; Cal. Code of Regs. § 11050(14)]**

8 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**

9 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**

10 **DEFENDANTS)**

11 93. TOWNSEND, and the putative Class, repeats and re-alleges paragraphs 1
12 through 92, inclusive, of this Complaint and they are incorporated herein by this reference.

13 94. Under the applicable IWC Wage Order 5-2001 (as amended),
14 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
15 aggrieved employees.

16 95. CAL. LAB. CODE § 1198 makes it illegal to employ an employee under
17 conditions of labor that are prohibited by the applicable wage order.

18 96. CAL. LAB. CODE § 1198 requires that "...the standard conditions of labor
19 fixed by the commission shall be the...standard conditions of labor for employees. The
20 employment of any employee...under conditions of labor prohibited by the order is
21 unlawful."

22 97. CAL. CODE REGS., Title 8, section 11050(14)(A) provides, "All working
23 employees shall be provided with suitable seats when the nature of the work reasonably
24 permits the use of seats."

25 98. CAL. CODE REGS, Title 8, section 11050(14)(B) provides, "When employees
26 are not engaged in the active duties of their employment and the nature of the work requires
27 standing, an adequate number of suitable seats shall be placed in reasonable proximity to
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1 the work area and employees shall be permitted to use such seats when it does not interfere
2 with the performance of their duties.”

3 99. DEFENDANTS violated CAL. LAB. CODE § 1198 and CAL. CODE REGS, Title
4 8, section 11050(14) because DEFENDANTS failed to provide adequate seating to
5 TOWNSEND, the putative Class, and all aggrieved employees while TOWNSEND, the
6 putative class, and all aggrieved employees were on and off duty. TOWNSEND, the
7 putative Class, and all aggrieved employees were required to work standing at all times,
8 even when they could have worked while seated, and were forced to continue to stand
9 during any time that they were not engaged in the active duties of their employment.

10 100. TOWNSEND, individually, on behalf of the putative Class, and on behalf of
11 all aggrieved employees, seeks recovery of all remedies available for violations of CAL.
12 LAB. CODE § 1198 and CAL. CODE REGS, Title 8, section 11050(14).

13 **EIGHTH CAUSE OF ACTION**

14 **CONVERSION - IMPROPER RECEIPT AND DISTRIBUTION OF GRATUITIES**

15 **[CAL. LAB. CODE § 351]**

16 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**

17 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**
18 **DEFENDANTS)**

19 101. Plaintiff repeats and re-alleges paragraphs 1 through 100, inclusive, of this
20 Complaint and they are incorporated herein by this reference.

21 102. Under the applicable IWC Wage Order 5-2001 (as amended),
22 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
23 aggrieved employees.

24 103. CAL. LAB. CODE § 351 states, “No employer or agent shall collect, take, or
25 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a
26 patron, or deduct any amount from wages due an employee on account of a gratuity, or
27 require an employee to credit the amount, or any part thereof, of a gratuity against and as a
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1 part of the wages due the employee from the employer. Every gratuity is hereby declared to
2 be the sole property of the employee or employees to whom it was paid, given, or left for.”

3 104. DEFENDANTS instituted a tip-pooling policy that allowed for managers to
4 take gratuities left by DEFENDANTS’ customers for TOWNSEND, the putative Class, and
5 all aggrieved employees. DEFENDANTS’ tip-pooling policy violated CAL. LAB. CODE §
6 351. Upon information and belief, DEFENDANTS and managers took tips without the
7 consent of employees, including TOWNSEND.

8 105. TOWNSEND, individually, on behalf of the putative Class, and on behalf of
9 all aggrieved employees, seeks recovery of all remedies available for violations of CAL.
10 LAB. CODE § 351.

11 **NINTH CAUSE OF ACTION**

12 **FOR FAILURE TO PAY WAGES UPON TERMINATION**

13 **[CAL. LAB. CODE § 203]**

14 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**
15 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**
16 **DEFENDANTS)**

17 106. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1
18 through 105, inclusive, of this Complaint and they are incorporated herein by this
19 reference.

20 107. Under the applicable IWC Wage Order 5-2001 (as amended),
21 DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all
22 aggrieved employees.

23 108. CAL. LAB. CODE § 201(a) provides that a discharged employee's unpaid
24 wages are due and payable immediately. Under CAL. LAB. CODE § 202(a), when an
25 employee not having a written contract for a definite period is terminated, his or her wages
26 become immediately due and payable.

27 109. CAL. LAB. CODE § 203 (a) provides, “If an employer willfully fails to pay,
28 without abatement or reduction, in accordance with Sections [201 and 202], any wages of

1 an employee who is discharged or who quits, the wages of the employee shall continue as a
2 penalty from the due date thereof at the same rate until paid or until an action therefore is
3 commenced; but the wages shall not continue for more than 30 days.”

4 110. TOWNSEND, the putative Class, and all aggrieved employees did not have
5 written contracts for definite terms of employment. TOWNSEND, the putative Class, and
6 all aggrieved employees were discharged from their employment with DEFENDANTS
7 within the applicable statute of limitations. DEFENDANTS willfully failed to pay
8 TOWNSEND, the putative Class, and all aggrieved employees the wages due to them—
9 without abatement or reduction.

10 111. Under CAL. LAB. CODE § 203, TOWNSEND, the putative Class, and all
11 aggrieved employees are entitled to one day’s wages for each day each employee was not
12 timely paid all wages due, up to a maximum of 30 days’ wages. Because DEFENDANTS
13 never paid overtime wages, minimum wages, or meal and rest period wages, each putative
14 Class member and aggrieved employee whose employment has been terminated during the
15 applicable statutory period, including TOWNSEND, is entitled to 30 days’ wages.
16 TOWNSEND, individually, on behalf of the putative Class, and on behalf of all aggrieved
17 employees, seeks to recover 30 days’ wages and applicable penalties. PLAINTIFF, on her
18 own behalf, on behalf of the putative class, and on behalf of all aggrieved employees, also
19 seeks recovery of reasonable attorneys’ fees and costs.

20 **TENTH CAUSE OF ACTION**

21 **FOR VIOLATION OF CALIFORNIA LABOR CODE SECTION 558**

22 **[CAL. LAB. CODE § 558]**

23 **(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees**

24 **Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All**
25 **DEFENDANTS)**

26 112. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1
27 through 111, inclusive, of this Complaint and they are incorporated herein by this
28 reference.

113. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all aggrieved employees.

114. CAL. LAB. CODE § 558(a) provides, “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” CAL. LAB. CODE § 558(c) provides, “The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

115. At all relevant times, DEFENDANTS violated the rights of TOWNSEND, the putative Class, and all aggrieved employees by violating various sections of the CAL. LAB. CODE. TOWNSEND seeks the remedies set forth in CAL. LAB. CODE § 558 for herself, the State of California, the putative Class, and all aggrieved employees.

ELEVENTH CAUSE OF ACTION

FOR UNFAIR COMPETITION

[CAL. BUS. & PROF. CODE § 17200 *et seq.*]

(By TOWNSEND, on Her Own Behalf, on Behalf of All Employees

Similarly Situated, and on Behalf of All Aggrieved Employees, and Against All DEFENDANTS)

116. TOWNSEND, and the putative Class, repeat and re-allege paragraphs 1 through 115, inclusive, of this Complaint and they are incorporated herein by this reference.

117. Under the applicable IWC Wage Order 5-2001 (as amended), DEFENDANTS were the joint employers of TOWNSEND, the putative Class, and all

1 aggrieved employees. DEFENDANTS are also a “person” as that term is defined under
2 CAL. BUS. & PROF. CODE § 17021.

3 118. CAL. BUS. & PROF. CODE section 17200 defines unfair competition as any
4 unlawful, unfair, or fraudulent business act or practice. At all times relevant hereto, by and
5 through the conduct described herein, DEFENDANTS have engaged in unfair and unlawful
6 practices by failing to provide TOWNSEND, the putative Class, and all aggrieved
7 employees with proper overtime wage compensation, minimum wage compensation, meal
8 period wage compensation, rest-period wage compensation, itemized statements,
9 reimbursement of business expenses, adequate seating, proper receipt and distribution of
10 gratuities, and wages upon termination of employment, as required by the applicable CAL.
11 LAB. CODE, and Industrial Welfare Commission provisions, in violation of CAL. BUS. &
12 PROF. CODE § 17200 et seq., and have thereby deprived TOWNSEND, the putative Class,
13 and all aggrieved employees of fundamental rights and privileges.

14 119. By and through the unfair and unlawful business practices described herein,
15 DEFENDANTS have obtained valuable property, money, and services from TOWNSEND,
16 the putative Class, and all aggrieved employees and have deprived them of valuable rights
17 and benefits guaranteed by law, all to the detriment of TOWNSEND, the putative Class,
18 and all aggrieved employees.

19 120. All the acts described herein are violations of, among other things, the CAL.
20 LAB. CODE and Industrial Welfare Commission Wage Order; are unlawful and in violation
21 of public policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and
22 thereby constitute unfair and unlawful business practices in violation of CAL. BUS. & PROF.
23 CODE § 17200 et seq.

24 121. TOWNSEND, the putative Class, and all aggrieved employees are entitled to,
25 and do, seek such relief as may be necessary to restore to them the money and property that
26 DEFENDANTS have acquired, or of which TOWNSEND, the putative Class, and all
27 aggrieved employees have been deprived, by means of the above-described unfair and
28 unlawful business practices.

1 122. TOWNSEND, the putative Class, and all aggrieved employees are further
2 entitled to, and do, seek a declaration that the above-described business practices are unfair
3 and unlawful and that an injunctive relief should be issued restraining DEFENDANTS from
4 engaging in any of the above-described unfair and unlawful business practices in the future.

5 123. TOWNSEND, the putative Class, and all aggrieved employees have no plain,
6 speedy, and/or adequate remedy at law to redress the injuries that they have suffered as a
7 consequence of the unfair and unlawful business practices of DEFENDANTS. As a result
8 of the unfair and unlawful business practices described above, TOWNSEND, the putative
9 Class, and all aggrieved employees have suffered and will continue to suffer irreparable
10 harm unless DEFENDANTS are restrained from continuing to engage in these unfair and
11 unlawful business practices. In addition, DEFENDANTS should be required to disgorge the
12 unpaid moneys to TOWNSEND, the putative Class, and all aggrieved employees.

13 **TWELFTH CAUSE OF ACTION**

14 **FOR PENALTIES UNDER TO THE PRIVATE ATTORNEYS GENERAL ACT**

15 **[California Labor Code § 2698, *et seq.*]**

16 **(By TOWNSEND, on Her Own Behalf, and as a Private Attorney General for All**
17 **Aggrieved Employees, and Against All DEFENDANTS)**

18 124. TOWNSEND repeats and re-alleges paragraphs 1 through 123, inclusive, of this
19 Complaint and they are incorporated herein by this reference.

20 125. The Private Attorneys General Act of 2004, codified in CAL. LAB. CODE §§
21 2698-2699, establishes that any provision of the CAL. LAB. CODE that provides for a civil
22 penalty to be assessed and collected by the Labor and Workforce Development Agency
23 (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees
24 for a violation of the CAL. LAB. CODE, may be recovered through a civil action brought by an
25 aggrieved employee on behalf of himself or herself, and other current or former employees.

26 126. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
27 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
28

1 authorized to exercise the same discretion, subject to the same limitations and conditions, to
2 assess a civil penalty.

3 127. TOWNSEND and all persons employed by DEFENDANTS as hourly paid
4 employees, are “aggrieved employees” as defined by CAL. LAB. CODE § 2699 in that they are all
5 current or former employees of DEFENDANTS, and one or more of the alleged violations was
6 committed against them.

7 128. TOWNSEND asserts all of her claims in this Complaint on behalf of herself and
8 all aggrieved employees in their capacity as Private Attorneys General and seeks all statutory
9 penalties available under CAL. LAB. CODE §§ 2698-2699.

10 129. On October 7, 2020, TOWNSEND gave written notice by certified mail to and
11 Defendants RO-AL, INC., PATRICK MOLLOY BASTIAN, ALICE BASTIAN HAHN, and
12 FRED HAHN of the specific code provisions alleged to have been violated, as required by CAL.
13 LAB. CODE § 2699.3. On the same date, TOWNSEND submitted a “PAGA Claim Notice” to the
14 Labor and Workforce Development Agency (“LWDA”) through its online portal.
15 TOWNSEND’s PAGA Notice Letter and LWDA Claim Submissions indicated that she, “as an
16 aggrieved employee, on her own behalf and on behalf of other employees of RO-AL, INC.;

17 Patrick Molly Bastian; Alice Bastian Hahn; Fred Hahn; and, any other affiliated entity
18 (collectively referred to herein as “**Molloys**”), intends to avail herself of the protections granted
19 by the CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 (“the Act”) (CAL.
20 LABOR CODE §2698 *et. seq.*).”

21 130. The statutory waiting period for TOWNSEND to add these allegations to the
22 Complaint has expired. As a result, under CAL. LAB. CODE § 2699.3, TOWNSEND, on behalf of
23 herself and all aggrieved employees, may now commence a representative civil action under
24 CAL. LAB. CODE § 2699 as a proxy of the State of California.

25 131. The policies, acts, and practices heretofore described were and are unlawful
26 business acts or practices because DEFENDANTS (a) failed to provide proper overtime wage
27 compensation to TOWNSEND, and other aggrieved employees; (b) failed to provide proper
28 minimum wage compensation to TOWNSEND, and other aggrieved employees; (c) failed to

1 provide meal periods to TOWNSEND, and other aggrieved employees; (d) failed to provide rest
2 periods to TOWNSEND, and other aggrieved employees; (e) failed to provide accurate itemized
3 wage statements to TOWNSEND, and other aggrieved employees; (f) failed to reimburse
4 business expenses to TOWNSEND, and other aggrieved employees; (g) failed to provide
5 adequate seating to TOWNSEND, and other aggrieved employees; (h) failed to properly receive
6 and distribute gratuities to TOWNSEND, and other aggrieved employees; and (i) failed to
7 timely pay wages to TOWNSEND, and other aggrieved employees, all in violation of the
8 applicable CAL. LAB. CODE sections listed in CAL. LAB. CODE § 2699.5, including but not
9 limited to CAL. LAB. CODE §§ 201, 202, 203, 226, 226.7, 351, 510, 512, 516, 1194, 1194.2,
10 1197.1, 1198, 2800, and 2802, which include penalties under CAL. LAB. CODE sections, 210,
11 225.5, 226.3, 558, 1174.5, 1197.1, and 2699, and the applicable Wage Order(s), giving rise to
12 statutory penalties as a result of the wrongful conduct.

13 132. TOWNSEND, on behalf of herself and all aggrieved employees, seeks
14 recovery of civil penalties as prescribed by the Private Attorney General Act of 2004 as the
15 representatives of the State of California for the illegal conduct perpetrated on
16 TOWNSEND and all aggrieved employees by DEFENDANTS.

17 **PRAYER**

18 WHEREFORE, TOWNSEND, individually, on behalf of the putative Class, and on
19 behalf of all aggrieved employees, prays for judgment against each Defendant, jointly and
20 severally, as follows:

21 **1. ON THE FIRST CAUSE OF ACTION**

- 22 (a) For overtime compensation and liquidated damages;
23 (b) For an award of interest, including prejudgment interest at the legal
24 rate; and,
25 (c) For statutory penalties, interest, costs of suit and attorneys' fees.

26 **2. ON THE SECOND CAUSE OF ACTION:**

- 27 (a) For minimum-wage compensation and liquidated damages;
28

(b) For an award of interest, including prejudgment interest at the legal rate; and,

(c) For statutory penalties, interest, costs of suit, and attorneys' fees.

3. ON THE THIRD, FOURTH, FIFTH, SEVENTH, EIGHTH, NINTH, AND TENTH CAUSES OF ACTION:

(a) For compensatory damages, including lost wages;

(b) For an award of interest, including prejudgment interest at the legal rate; and,

(c) For statutory penalties, interest, costs of suit and attorneys' fees.

4. ON THE SIXTH CAUSE OF ACTION

(a) For all unreimbursed business expenses and such general and special damages as may be appropriate;

(b) For all actual, consequential and incidental losses and damages, according to proof;

(c) For statutory penalties, interest, costs of suit and attorneys' fees;

(d) For such other and further relief the court may deem just and proper.

5. ON THE ELEVENTH CAUSE OF ACTION:

(a) For restitution and disgorgement;

(b) For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper; and,

(c) For other injunctive relief ordering DEFENDANTS to notify the Plaintiff and the Class that they have not been paid the proper amounts required in accordance with California law.

6. ON THE TWELFTH CAUSE OF ACTION:

(a) For statutory penalties, interest, costs of suit, and attorneys' fees.

7. ON ALL CAUSES OF ACTION:

(a) For reasonable attorneys' fees;

- 1 (b) For costs of suit;
2 (c) For prejudgment interest; and,
3 (d) For other and further relief their court deems just and proper.
4

5 Dated: December 14, 2020

LAW OFFICES OF DAVID R. GREIFINGER

7 By: 
8 DAVID R. GREIFINGER
9 *Attorneys for Plaintiffs*
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DEMAND FOR JURY TRIAL

TOWNSEND demands a jury trial on issues triable to a jury.

Dated: December 14, 2020

LAW OFFICES OF DAVID R. GREIFINGER

By: 
DAVID R. GREIFINGER
Attorneys for Plaintiffs

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