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Superior Court of California
County of Los Angeles

JUL 19 2021

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14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF LOS ANGELES**

16 CHRISTY FRANCO, individually, and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.

20 SIL AFFAMATO, INC., MICHAEL
21 MANGIONE, ANTHONY MANGIONE
22 and DOES 1 through 100, inclusive,

23 Defendants.

Case No. 21STCV12228

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. **UNLAWFUL FAILURE TO PAY WAGES**
2. **FAILURE TO PROVIDE MEAL AND REST PERIODS**
3. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
4. **FAILURE TO PAY WAGES ON TERMINATION**
5. **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
6. **PRIVATE ATTORNEYS GENERAL ACT CLAIM**

[JURY TRIAL DEMANDED]

24 Representative Plaintiff alleges as follows:

25 **INTRODUCTION**

26 1. This is a class and representative action seeking unpaid compensation for wages,
27 meal and/or rest period violations, interest thereon, liquidated damages and other penalties,
28

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24 Representative Plaintiff alleges as follows:

25 **INTRODUCTION**

26
27 1. This is a class and representative action seeking unpaid compensation for wages,
28 meal and/or rest period violations, interest thereon, liquidated damages and other penalties,

1 injunctive and other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*,
2 California Labor Code §§ 200-204, 210, 218, *et seq.*, 223, 225.5, 226, *et seq.*, 256, 510, 512, 558,
3 1174, 1174.5, 1182.12, 1194, *et seq.*, 1197, 1197.1, 1198, 2698, *et seq.*, 2802, California Business
4 and Professions Code §§ 17200, *et seq.*, and California Code of Civil Procedure § 1021.5.

5 2. Representative Plaintiff Christy Franco ("Representative Plaintiff" or "Plaintiff")
6 brings this action individually and on behalf of all other persons similarly situated ("Class
7 Members" and/or the "Plaintiff Class") who are or have been employed by Defendants Sill
8 Affamato, Inc., Michael Mangione, Anthony Mangione, and/or Does 1 through 100, inclusive
9 ("Defendants") as non-exempt food service employees within the State of California within the
10 applicable class and PAGA periods.

11 3. The class period begins on March 30, 2017 and extends through trial, based upon
12 the allegation that the violations of California's wage and hour law, as described more fully below,
13 have been and are ongoing throughout that time.

14 4. The relevant period for recovery of penalties under California's Private Attorneys
15 General Act begins on March 29, 2020 and extends through trial (i.e., the "PAGA period"), based
16 upon the allegation that the violations of California's wage and hour laws, as described more fully
17 below, have been ongoing throughout that time.

18 5. Representative Plaintiff and those persons working for Defendants in California as
19 non-exempt employees within these periods and trial, inclusive, are referred to herein as "Class
20 Members," "Aggrieved Employees" or both.

21 6. Throughout the class and PAGA periods, Defendants have had a consistent policy
22 of (1) unlawfully denying Representative Plaintiff, Aggrieved Employees and Class Members
23 statutorily-mandated meal and rest periods, (2) willfully failing to provide Representative Plaintiff,
24 Aggrieved Employees and Class Members with accurate semimonthly itemized wage statements
25 reflecting the total number of hours each worked, the applicable deductions, and the applicable
26 hourly rates in effect during the pay period, and (3) willfully failing to pay compensation in a
27 prompt and timely manner to those Class Members and Aggrieved Employees whose employment
28 with Defendants has terminated.

8. Despite actual knowledge of these facts and legal mandates, Defendants have and continue to enjoy an advantage over their competition and a resultant disadvantage to their workers by electing not to pay all wages due (including missed meal and rest period compensation) and/or all penalties due (including “waiting time” penalties) to Class Members and Aggrieved Employees.

9. Representative Plaintiff is informed and believes and, based thereon, alleges that Defendants' officers knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

10. Despite Defendants' knowledge of their workers' entitlements in these respects, Defendants failed to provide same to Representative Plaintiff, Aggrieved Employees and/or Class Members, in violation of California state statutes, the applicable California Industrial Welfare Commission Wage Order, and Title 8 of the California Code of Regulations. This action is brought to redress and end this prolonged pattern of unlawful conduct once and for all.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the claims brought herein for unpaid wages, expense reimbursements, other damages and/or penalties, etc. under, *inter alia*, the applicable Industrial Welfare Commission Wage Order (as effectuated through the California Labor Code), Title 8 of the California Code of Regulations, Labor Code §§ 201-204, 226, 226.7, 512, 1174, 2699 and 2802, *inter alia*, and/or the California Code of Civil Procedure § 1021.5.

12. This Court also has jurisdiction over the claims herein for injunctive relief and restitution of ill-gotten benefits arising from Defendants' unfair and/or fraudulent business practices under California Business & Professions Code § 17200, *et seq.*

13. Venue as to Defendants is proper in this judicial district pursuant to California Code of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County where Plaintiff and numerous Class Members worked, transacts business, have agents, and are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had a direct effect on Representative Plaintiff and those similarly situated within the State of California and within this County.

PLAINTIFF

14. Representative Plaintiff is a natural person who was employed by Defendants as a food service employee during the class and PAGA periods. During part of the class and PAGA periods, Representative Plaintiff was a minor.

15. In this capacity, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment and protections of California law, as set forth herein.

DEFENDANTS

16. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, Defendants (including the Doe defendants) did business within the State of California providing restaurant services.

17. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff, Aggrieved Employees and/or Class Members within the State of California.

18. Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint

1 when such names are ascertained. Representative Plaintiff is informed and believes and, on that
2 basis, alleges that each of the fictitiously-named defendants were responsible in some manner for,
3 gave consent to, ratified, and/or authorized the conduct herein alleged and that the damages, as
4 herein alleged, were proximately caused thereby.

5 19. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
6 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
7 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
8 scope of such agency and/or employment.

9
10 **CLASS ACTION ALLEGATIONS**

11 20. Representative Plaintiff brings this action individually and on behalf of all persons
12 similarly situated and proximately damaged by Defendants' conduct including, but not necessarily
13 limited to, the following Plaintiff Class:

14 "All persons employed by Defendants as non-exempt food service
15 employees in California on or after March 30, 2017."

16 21. Individuals comprising membership in the Class identified above are collectively
17 referred to as "Class Members" and/or members of the "Plaintiff Class," unless specifically
18 identified otherwise.

19 22. Defendants' officers and directors are excluded from the Plaintiff Class.

20 23. This action has been brought and may properly be maintained as a class action
21 under California Code of Civil Procedure § 382 because there is a well-defined community of
22 interest in the litigation and the proposed class is easily ascertainable.

23 a. Numerosity: A class action is the only available method for the fair
24 and efficient adjudication of this controversy. Insofar as
25 Representative Plaintiff is informed and believes and, on that basis,
26 alleges that there are sufficient Class Members to meet the
27 numerosity requirement, the members of the Plaintiff Class are so
28 numerous that joinder of all members is impractical, if not
impossible. Membership in the class will be determined upon
analysis of employee and payroll, among other, records maintained
by Defendants.

- b. Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
- 1) Whether Defendants violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;
 - 2) Whether Defendants violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 3) Whether Defendants violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendants terminated;
 - 4) Whether Defendants violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each, all wages earned and all applicable hourly rates in effect during the pay period; and
 - 5) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code § 203.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole and anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or

may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

24. As described herein, for years, Defendants have knowingly failed to adequately compensate Representative Plaintiff, Aggrieved Employees and Class Members for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over similar companies.

25. Defendants have declined to pay these wages, even upon a Class Member's termination or resignation from employment, in blatant violation of California Labor Code § 201 and/or § 202.

26. California Labor Code §§ 201 and 202 require Defendants to pay severed employees all wages due and owed to the employee immediately upon discharge or within 72 hours of resignation of their positions, in most circumstances. California Labor Code § 203 provides that an employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

27. Furthermore, despite knowledge of the Representative Plaintiff's, Aggrieved Employees' and Class Members' entitlement to compensation for all hours worked, Defendants violated California Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records by members of the Plaintiff Class. Defendants also failed to provide Representative Plaintiff, Aggrieved Employees and Class Members with accurate semimonthly itemized statements of the total number of hours worked by each, and all applicable hourly rates in effect, during the pay period, in violation of California Labor Code § 226. In failing to provide the required documents, Defendants have not only failed to pay their workers the full amount of compensation due, but have also, until now, effectively shielded themselves from employee scrutiny by concealing the magnitude and financial impact of their wrongdoing that such documents might otherwise have led workers to discover.

1 28. Representative Plaintiff, Aggrieved Employees and all persons similarly situated
2 are entitled to unpaid compensation, yet, to date, have not received such compensation despite
3 many of the same having been terminated by and/or resigned from Defendants' employ. More than
4 30 days have passed since certain Class Members and Aggrieved Employees have left Defendants'
5 employ.

6 29. As a consequence of Defendants' willful conduct in not paying former employees'
7 compensation for all hours worked in a prompt and timely manner, certain Class Members and
8 Aggrieved Employees are entitled to up to 30 days wages as a penalty under California Labor Code
9 § 203, together with attorneys' fees and costs.

10 30. As a direct and proximate result of Defendants' unlawful conduct, as set forth
11 herein, Representative Plaintiff, Aggrieved Employees and Class Members have sustained
12 damages, as described above, including compensation for loss of earnings for hours worked on
13 behalf of Defendants, in an amount to be established at trial. As a further direct and proximate
14 result of Defendants' unlawful conduct, as set forth herein, certain Class Members and Aggrieved
15 Employees are entitled to recover "waiting time" penalties (pursuant to California Labor Code §
16 203) and penalties for failure to provide semimonthly statements of hours worked and all
17 applicable hourly rates (pursuant to California Labor Code § 226) in an amount to be established
18 at trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth
19 herein, Representative Plaintiff, Aggrieved Employees and Class Members are also entitled to
20 recover costs and attorneys' fees pursuant to statute.

21 31. Representative Plaintiff seeks injunctive relief prohibiting Defendants from
22 engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff
23 also seeks restitution of costs incurred by Class Members and Aggrieved Employees under
24 California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
25 continue unchecked, while Class Members and Aggrieved Employees bear the financial brunt of
26 Defendants' unlawful conduct. As a further direct and proximate result of Defendants' unlawful
27 conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and Class Members
28 are also entitled to recover costs and attorneys' fees, pursuant to statute.

32. Representative Plaintiff Christy Franco has complied with the procedures necessary to maintain a civil action against Defendants for violation of California's Private Attorneys General Act, as specified in California Labor Code § 2699.3.

33. On March 29, 2021, Representative Plaintiff Christy Franco served and filed a notice upon the California Labor and Workforce Development Agency ("LWDA") and Defendants in compliance with Labor Code §§ 2699, *et seq.*

FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY WAGES
(California Labor Code §§ 200-204, 510, 558, 1194, 1197 and 1198; IWC Wage Order)

34. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

35. During the class and PAGA periods, Representative Plaintiff, Aggrieved Employees and Class Members performed work for Defendants, oftentimes in excess of eight hours in a workday and/or forty hours in a workweek. The number of hours will be proven at trial.

36. During the class and PAGA periods, Defendants refused to compensate Representative Plaintiff, Aggrieved Employees and Class Members for all of the wages they earned, in violation of the applicable IWC Wage Order and provisions of the California Labor Code.

37. At all relevant times, Defendants were aware of, and were under a duty to comply with, the overtime provisions of the California Labor Code including, but not limited to, California Labor Code §§ 510, 1194 and 1198.

38. California Labor Code § 510(a) provides, in pertinent part:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

1 39. California Labor Code § 1194(a) provides, in pertinent part:

2 Notwithstanding any agreement to work for a lesser wage, any employee
3 receiving less than the legal minimum wage or the legal overtime
4 compensation applicable to the employee is entitled to recover in a civil
5 action the unpaid balance of the full amount of this minimum wage or
6 overtime compensation, including interest thereon, reasonable attorneys'
7 fees, and costs of suit.

8 40. California Labor Code § 1198 provides, in pertinent part:

9 The maximum hours of work and the standard conditions of labor fixed by
10 the commission shall be the maximum hours of work and the standard
11 conditions of labor for employees. The employment of any employee for
12 longer hours than those fixed by the order or under conditions of labor
13 prohibited by the order is unlawful.

14 41. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
15 which an employee is subject to the control of the employer and includes all the time the employee
16 is suffered or permitted to work, whether or not required to do so.

17 42. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
18 employees at least the minimum wage set forth therein for all hours worked, which consist of all
19 hours that an employer has actual or constructive knowledge that employees are working.

20 43. By refusing to compensate Representative Plaintiff, Aggrieved Employees and
21 Class Members for minimum wages and/or overtime wages earned, Defendants violated those
22 California Labor Code provisions cited herein as well as the applicable IWC Wage Order.

23 44. Defendants' conduct, as heretofore detailed, represents underpayment of wages
24 pursuant to California Labor Code §§ 218, *et seq.*, 558, 1182.12, 1194, *et seq.*, and 1197, *et seq.*,
25 for which damages and/or penalties are now sought in an amount according to proof.

26 45. As a direct and proximate result of Defendants' unlawful conduct, as set forth
27 herein, Representative Plaintiff, Aggrieved Employees and Class Members have sustained
28 damages, including loss of earnings for hours of overtime worked on behalf of Defendants, in an
amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and Class Members

are entitled to recover penalties in amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

46. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

47. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code § 226.7 and §512.

48. California Labor Code § 226.7 provides, in pertinent part:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

49. Moreover, California Labor Code § 512(a) provides, in pertinent part:

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

50. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

51. Section 11 of the applicable IWC Wage Order provides:

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

3 (B) An employer may not employ an employee for a work period of more
4 than ten (10) hours per day without providing the employee with a
5 second meal period of not less than 30 minutes...

6 (C) If an employer fails to provide an employee a meal period in accordance
7 with the applicable provisions of this order, the employer shall pay the
8 employee one (1) hour of pay at the employee's regular rate of
9 compensation for each workday that the meal period is not provided.

10 52. Moreover, Section 12 of the applicable IWC Wage Order provides:

11 (A) Every employer shall authorize and permit all employees to take rest
12 periods, which insofar as practicable shall be in the middle of each work
13 period. The authorized rest period time shall be based on the total hours
14 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
15 or major fraction thereof

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

20 53. By failing to consistently provide uninterrupted thirty-minute meal periods within
21 the first five hours of work each day, a second uninterrupted thirty-minute meal period within the
22 first ten hours of work each day and/or uninterrupted net ten-minute rest periods Representative
23 Plaintiff, Aggrieved Employees and Class Members, Defendants violated the California Labor
24 Code and applicable IWC Wage Order provisions.

25 54. Representative Plaintiff is informed and believes and, on that basis, alleges that
26 Defendants have never paid the one hour of compensation to Representative Plaintiff or any
27 Aggrieved Employees or Class Members due to their violations of the California Labor Code and
28 applicable IWC Wage Order provisions.

55. As a direct and proximate result of Defendants' unlawful conduct, as set forth
herein, Representative Plaintiff, Aggrieved Employees and Class Members have sustained
damages, including lost compensation resulting from missed meal and/or rest periods, in an
amount to be established at trial.

56. As a further direct and proximate result of Defendants' unlawful conduct, as set
forth herein, certain Class Members and Aggrieved Employees are entitled to recover "waiting

time” penalties in amounts to be established at trial, as well as recovery of attorneys’ fees and costs, pursuant to statute.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

57. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

58. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

59. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

60. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall. . . [k]eep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to...employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years.

61. Defendants have failed to provide timely, accurate itemized wage statements to the Class Members in accordance with California Labor Code California Labor Code § 201-204, 226,

226.3, 226.7, 512, 1174, 1174.5 and 2810.5. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for Representative Plaintiff, Aggrieved Employees and Class Members.

62. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and Class Members are entitled to penalties in an amount to be established at trial and are entitled to recover attorneys' fees and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

63. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

64. California Labor Code § 203 provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

65. Numerous Class Members and Aggrieved Employees were employed by Defendants during the class and PAGA periods and were thereafter involuntarily terminated or resigned from their positions yet were not paid all wages due upon said termination or within 72 hours of said resignation of employment therefrom. This non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

66. More than 30 days have elapsed since certain Class Members and Aggrieved Employees were involuntarily terminated or voluntarily resigned from Defendants' employ.

67. As a direct and proximate result of Defendants' willful conduct in failing to pay said Class Members and Aggrieved Employees for all hours worked, affected Class Members and Aggrieved Employees are entitled to recover "waiting time" penalties of up to thirty days' wages

1 pursuant to California Labor Code § 203 in an amount to be established at trial, and attorneys' fees
2 and costs.

3
4 **FIFTH CAUSE OF ACTION**
5 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
6 **(California Business & Professions Code §§ 17200-17208)**

7 68. Each and every allegation of the preceding paragraphs is incorporated in this cause
8 of action with the same force and effect as though fully set forth herein.

9 69. Representative Plaintiff further brings this cause of action seeking equitable and
10 statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of
11 the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices
12 described herein.

13 70. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or
14 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
15 17208. Specifically, Defendants conducted business activities while failing to comply with the
16 legal mandates cited herein.

17 71. Defendants have clearly established a policy of accepting a certain amount of
18 collateral damage, as represented by the damages and penalties to Class Members and Aggrieved
19 Employees herein alleged, as incidental to their business operations, rather than accept the
20 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
21 borne by their responsible competitors and as set forth in legislation and the judicial record.

22
23 **SIXTH CAUSE OF ACTION**
24 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
25 **(California Labor Code §§ 2699, et seq.)**

26 72. Each and every allegation of the preceding paragraphs is incorporated in this cause
27 of action with the same force and effect as though fully set forth herein.

28 73. California Labor Code § 2699(a) provides, in pertinent part:

1 Notwithstanding any other provision of the law, any provision of this code
2 that provides for a civil penalty to be assessed and collected by the Labor
3 and Workforce Development Agency or any of its departments, divisions,
4 commissions, boards, agencies, or employees, for a violation of this code,
5 may, as an alternative, be recovered through a civil action brought by an
6 Aggrieved Employee on behalf of themselves or herself and other current
7 or former employees. . .

8 74. Representative Plaintiff and each and every other non-exempt service employee
9 working in California for Defendants within one year of the exhaustion of the administrative
10 prerequisites under the California Private Attorneys General Act, as described herein, are
11 “Aggrieved Employees,” as defined by California Labor Code § 2699(c), because she/they
12 was/were employed by Defendants and were among the employees against whom the violations
13 of law articulated in this Complaint were committed.

14 75. These Aggrieved Employees share each and every one of the factual underpinnings
15 and predicate violations articulated in the preceding paragraphs of this Complaint with Class
16 Members and the Representative Plaintiff.

17 76. As set forth above, Representative Plaintiff has met all of the requirements set forth
18 in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for
19 violations of (and/or recovery on behalf of the State of California under) California’s Private
20 Attorneys General Act.

21 77. Representative Plaintiff Christy Franco brings this action on direct and/or indirect
22 behalf of all Aggrieved Employees, alleging violations of the California Labor Code provisions
23 cited in the preceding paragraphs.

24 78. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
25 herein, Representative Plaintiff, Aggrieved Employees and the State of California are entitled to
26 recover penalties as provided by California Labor Code § 2699, in an amount to be established at
27 trial, as well as costs and attorneys’ fees, pursuant to statute(s).

28

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, individually and on behalf of the proposed Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed class and/or any other appropriate subclasses under California Code of Civil Procedure § 382;

2. That the Court declare, adjudge, and decree that Defendants willfully violated their legal duties to pay all wages due under the California Labor Code and the applicable California Industrial Welfare Commission Wage Order provisions;

3. That the Court make an award to Representative Plaintiff and Class Members of one hour of pay at each employee's regular rate of compensation for each workday that a meal period was not adequately provided;

4. That the Court make an award to Representative Plaintiff and Class Members of one hour of pay at each employee's regular rate of compensation for each workday that a rest period was not adequately authorized and provided;

5. That the Court make an award to the Representative Plaintiffs and Class Members of penalties, pursuant to California Labor Code §§ 203, 226, 558 and 1174.5 and/or liquidated damages pursuant to § 1194.2, in amounts to be proven at trial;

6. That the Court order Defendants to pay restitution to Representative Plaintiff and Class Members due to Defendants' unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

7. That the Court further enjoin Defendants, ordering them to cease and desist from unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

8. For interest on the amount of any and all economic losses, at the prevailing legal rate;

1 9. That the Court make an award to Class Members of penalties, pursuant to California
2 Labor Code §§ 203, 226, 558, 1174.5 and/or liquidated damages pursuant to § 1194.2, in an amount
3 to be proven at trial;

4 10. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §
5 1021.5 and Labor Code § 218.5;

6 11. That the Court make an award of civil penalties to Aggrieved Employees and the
7 State of California, pursuant to California Labor Code § 2699, *et seq.*;

8 12. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §
9 1021.5, and Labor Code §§ 218.5 and/or 2699, *et seq.*;

10 13. For costs of suit and any and all such other relief as the Court deems just and proper;

11 14. For all other Orders, findings and determinations identified and sought in this
12 Complaint.

13
14 **JURY DEMAND**

15 Representative Plaintiff, individually and on behalf of the Plaintiff Class, hereby demands
16 a trial by jury on all issues triable by jury.

17
18 Dated: July 19, 2021

SCOTT COLE & ASSOCIATES, APC

19
20 By:



21 Cody Alexander Bolce, Esq.
22 Attorneys for Representative Plaintiff
23
24
25
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27
28

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Scott Cole & Associates, APC, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

FIRST AMENDED COMPLAINT FOR:

- 1. UNLAWFUL FAILURE TO PAY WAGES**
- 2. FAILURE TO PROVIDE MEAL AND REST PERIODS**
- 3. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
- 4. FAILURE TO PAY WAGES ON TERMINATION**
- 5. UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
- 6. PRIVATE ATTORNEYS GENERAL ACT CLAIM**

	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
	By personal delivery.
	By e-mail transmission to the e-mail address(es) below.
	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
X	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

Raina Singer, Esq.
Katherine Den Bleyker, Esq.
LEWIS, BRISBOIS, BISGAARD & SMITH LLP
633 W. 5th Street, Suite 4000
Los Angeles, CA 90071
Email: Raina.Singer@lewisbrisbois.com
Email: Katherine.DenBleyker@lewisbrisbois.com

I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on July 19, 2021.


Nicole Randle