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Attorneys for Plaintiff RICARDO REAL as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

RICARDO REAL,

Plaintiff,

v.

EL SUSHI LOCO, INC., and DOES 1 through
 50, inclusive,

Defendant.

Case No.: **21PSCV00450**

COMPLAINT FOR DAMAGES

1. Violation of PAGA for Failure to Pay All Wages Including Minimum, Regular, and Overtime Wages (Lab. Code, §§ 204, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198);
2. Violation of PAGA for Failure to Provide Meal Periods (Lab. Code, §§ 226.7, 512);
3. Violation of PAGA for Failure to Provide Rest Periods (Lab. Code, §§ 226.7);
4. Violation of PAGA for Failure to Timely Pay Wages Upon Separation of Employment (Lab. Code, §§ 201, 202, 203);
5. Violation of PAGA for Failure to Maintain Accurate Payroll Records (Lab. Code, §§ 226, subd. (A), (E), 226.3, 1174, 1174.5); and
6. Violation of PAGA for Failure to Reimburse Business Expenses (Lab. Code, § 2802).

1 Plaintiff RICARDO REAL ("Plaintiff"), individually and on behalf of other aggrieved
2 employees, hereby complains and alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
5 Act of 2004 ("PAGA") against Defendant EL SUSHI LOCO, INC.; and DOES 1 through 50
6 ("Defendant"), on behalf of himself individually and all other current and former aggrieved
7 employees employed by Defendant throughout California during the PAGA period. The PAGA
8 period is defined as one year prior to Plaintiff's notice of labor code violations to the Labor and
9 Workforce Development Agency ("LWDA") and certified mailing of said notice to Defendant
10 until resolution.

11 2. Defendant own and operate a restaurant business in California. Defendant
12 employed and/or continue to employ Plaintiff and other aggrieved employees throughout
13 California.

14 3. Defendant has engaged in a systematic pattern of wage and hour violations under
15 the Labor Code, including, but not limited to, failure to pay all wages (including minimum,
16 regular, and overtime compensation); failure to provide meal periods or compensation in lieu
17 thereof; failure to authorize or permit rest breaks or provide compensation in lieu thereof; failure
18 to provide accurate itemized wage statements; failure to pay all wages due upon separation of
19 employment; and failure to reimburse business expenses. These violations concern current and
20 past non-exempt employees of Defendant.

21 4. At all relevant times herein, Defendant has consistently maintained and enforced
22 against Plaintiff and the aggrieved employees the unlawful practices and policies set forth herein.

23 **JURISDICTION AND VENUE**

24 5. Venue is proper in Los Angeles County, because Defendant maintain its locations
25 and transacts business in this county, the obligations and liability primarily arise in this county,
26 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

27 6. The California Superior Court has jurisdiction over this matter. The individual
28 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal

1 court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount
2 required for diversity removal. Further, there is no federal question at issue as the issues herein
3 are based solely on California statutes and law, including, but not limited to, the Labor Code,
4 Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and California
5 Rules of Court

6 **THE PARTIES**

7 **Plaintiff**

8 7. Plaintiff is, and at all times herein mentioned was, a resident of the County of Los
9 Angeles. In or around 2014, Defendant hired Plaintiff as a non-exempt hourly server and
10 terminated him on March 28, 2020.

11 **Defendant**

12 8. Plaintiff is informed and believes, and based thereon alleges, that Defendant EL
13 SUSHI LOCO, INC. ("ESL") is a California corporation that is a restaurant company. On
14 information and belief, and based thereon, Plaintiff alleges that ESL is conducting business in
15 good standing in California, and at all times herein mentioned has regularly conducted business
16 throughout the State of California.

17 9. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
18 participation in the conduct herein alleged of the Defendant sued herein as DOES 1 through 50,
19 inclusive, but on information and belief allege that said Defendant are legally responsible for the
20 occurrences alleged herein, and that the damages of Plaintiff and the aggrieved employees were
21 proximately caused by such Defendant. Plaintiff will amend this complaint to allege the true
22 names and capacities of the DOE Defendant when ascertained.

23 10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
25 joint venture of the remaining Defendant and was acting within the course and scope of the
26 relationship. Plaintiff is further informed and believes, based thereon alleges, that each of the
27 Defendant herein gave consent to, ratified and authorized the acts alleged herein to the remaining
28 Defendant.

1 11. Plaintiff is further informed and believes, and based thereon alleges, that
2 Defendant herein acted as a joint employer at all relevant times. Defendant acted in all respects
3 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
4 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
5 attributable to the other Defendant.

6 **ADMINISTRATIVE PREREQUISITES**

7 12. By this complaint, Plaintiff brings this case as a representative action seeking
8 penalties for himself, the aggrieved employees, and the State of California in a representative
9 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
10 employee who was employed by Defendant and subject to at least one of the Labor Code
11 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
12 his notice to the LWDA and Defendant: violation of Labor Code sections 201, 202, 203, 204,
13 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and
14 2802.

15 13. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
16 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
17 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
18 not to investigate, or after 65 days have passed without notice from the LWDA.

19 14. Prior to filing this complaint, on March 25, 2021 Plaintiff gave written notice of
20 the specific provisions alleged to have been violated, including the facts and theories to support
21 the alleged violations, as required by Labor Code section 2699.3. The written notice was given
22 via certified mail to Defendant, and the LWDA by electronically filing the notice via the
23 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
24 LWDA-CM-827044-21. A true and correct copy of Plaintiff's notice to the LWDA and
25 Defendant(s), dated March 25, 2021, is attached hereto as Exhibit A.

26 15. The LWDA has not provided Plaintiff with any notice that it intends to investigate
27 the violations as alleged in Plaintiff's March 25, 2021 notice, and more than sixty-five (65)
28 calendar days have elapsed since the postmark date on the notice.

GENERAL ALLEGATIONS

16. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

17. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

18. Defendant's conduct during the PAGA period with respect to Plaintiff and the aggrieved employees violates numerous Labor Code sections as detailed herein.

19. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

20. At all relevant times herein, Defendant employed Plaintiff and other aggrieved employees as non-exempt employees.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and aggrieved employees were entitled to receive wages for all hours worked, including the applicable minimum, regular, and overtime wages, and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Defendant required Plaintiff and aggrieved employees to clock out and continue working during their meal periods off-the-clock and failed to compensate them for all overtime hours worked.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and aggrieved employees were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'

1 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
2 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
3 of not providing proper meal periods. Defendant instructed Plaintiff and aggrieved employees to
4 clock out for meal periods and continue working off-the-clock clock which resulted in missed
5 meal periods. Plaintiff and aggrieved employees also missed meal periods as a result of
6 Defendant's understaffing and heavy workload. In addition, Defendant failed to provide second
7 meal periods when Plaintiff and aggrieved employees worked in excess of ten (10) hours. As a
8 result of Defendant's unlawful policy and practice, Plaintiff and aggrieved employees did not
9 receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved
10 employees' regular rate of pay when they did not receive a timely, uninterrupted thirty (30) minute
11 off-duty meal period.

12 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
13 or should have known that Plaintiff and aggrieved employees were entitled to receive all paid ten
14 (10) minute, uninterrupted and off-duty rest periods or payment of one (1) additional hour of pay
15 at Plaintiff's and aggrieved employees' regular rate of pay when a rest period was missed,
16 interrupted, or shortened. In violation of the Labor Code and IWC Wage Orders, Defendant had
17 a pattern, practice, and policy of not providing paid rest periods. Specifically, Plaintiff and
18 aggrieved employees were unable to take rest breaks due to their heavy workload and were
19 pressured to forego rest breaks and complete their work assignments. As a result of Defendant's
20 policy and practice, it systematically denied Plaintiff and aggrieved employees from taking proper
21 rest breaks. Plaintiff and aggrieved employees did not receive all paid rest periods or payment of
22 one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when a
23 paid rest period was on-duty, missed, shortened or interrupted.

24 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
25 or should have known that Plaintiff and certain aggrieved employees were entitled to timely
26 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
27 and certain aggrieved employees did not receive payment of all wages due, within permissible
28 time periods, upon separation of employment.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage statements that accurately showed their actual hours worked, total hours worked, number of hours worked at each hourly rate, and gross and net wages earned in accordance with California law. In violation of the Labor Code, Plaintiff and aggrieved employees were not provided with accurate itemized wage statements that accurately reported their gross and net wages earned, total hours worked, and each applicable rate of pay in effect during the pay period with the corresponding number of hours worked, among other things.

26. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should have known that Defendant were required to maintain accurate records of the hours worked by Plaintiff and aggrieved employees. In violation of the California Labor Code, Defendant failed to maintain accurate records of hours worked by Plaintiff and aggrieved employees by requiring them to work off-the-clock without compensation, among other things.

Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and aggrieved employees were entitled to receive business reimbursements for necessary expenditures incurred in connection with the performance and execution of their job duties. Defendant required Plaintiff and aggrieved employees to drive their personal vehicles between Defendant's worksites during their shifts without reimbursement for mileage, maintenance, insurance, and wear and tear on their vehicles. In violation of the Labor Code, Defendant failed to reimburse Plaintiff and aggrieved employees for these business-related expenditures.

FIRST CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO
PAY ALL WAGES INCLUDING MINIMUM, REGULAR, AND OVERTIME WAGES
(Lab. Code, §§ 204, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198)
(Against all Defendants)**

27. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

1 28. Labor Code section 204 provides that all wages earned during employment are due
2 and payable twice during each calendar month on dates designated in advance by the employer.

3 29. Labor Code 1182.12 provides the applicable minimum wage rate in California.

4 30. Labor Code section 510, subdivision (a), provides that any work in excess of eight
5 (8) hours in any workday and any work in excess of forty (40) hours in a workweek, shall be
6 compensated at a rate of no less than one and one-half times the regular rate of pay for an
7 employee. Any work in excess of twelve (12) hours in a workday shall be compensated at the rate
8 of twice the regular rate of pay for an employee.

9 31. Labor Code sections 1194 and 1194.2 provide the remedies available for an action
10 to recover minimum and overtime wages, 1197 mandates that payment of less than the applicable
11 minimum wage is unlawful, and 1198 provides that an employer's failure to follow the standard
12 conditions of labor fixed by the commissions is unlawful.

13 32. Labor Code section 558, subdivision (a) further provides "[a]ny employer or other
14 person acting on behalf of an employer who violates, or causes to be violated, a section of this
15 chapter or any provision regulating hours and days of work in any order of the Industrial Welfare
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars
17 (\$50.00) for each underpaid employee for each pay period for which the employee was underpaid
18 . . . (2) For each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee
19 for each pay period for which the employee was underpaid."

20 33. Labor Code section 1197.1 also provides "[a]ny employer or other person acting
21 either individually or as an officer, agent, or employee of another person, who pays or causes to
22 be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
23 or by an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any
24 initial violation that is intentionally committed, one hundred dollars (\$100.00) for each underpaid
25 employee for each pay period for which the employee is underpaid . . . (2) For each subsequent
26 violation for the same specific offense, two hundred fifty dollars (\$250.00) for each underpaid
27 employee for each pay period for which the employee is underpaid regardless of whether the
28 initial violation is intentionally committed.

1 34. At all relevant times, Defendant were employers of Plaintiff and the aggrieved
2 employees, and subject to the Labor Code, IWC Wage Orders, and other applicable statutes, rules,
3 and regulations.

4 35. At all relevant times herein, Plaintiff and aggrieved employees were and are paid
5 as non-exempt employees.

6 36. At all relevant times, Plaintiff and the aggrieved employees worked in excess of
7 eight (8) hours per day and forty (40) hours per week.

8 37. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked,
9 including the applicable minimum, regular, and overtime compensation, and failed to record
10 actual hours worked by, inter alia, requiring Plaintiff and aggrieved employees to work off-the-
11 clock during meal periods and failing to provide compensation for all overtime hours worked.

12 38. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
13 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
14 will be ascertained according to proof at trial.

15 39. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
16 employees and the State of California for violations of Labor Code sections 204, 510, 1194, 1197,
17 1198 and pursuant to Labor Code sections 558 and 1197.1 during the PAGA period, in a sum as
18 provided by the Labor Code and/or other statutes.

19 40. Plaintiff, individually and on behalf of the aggrieved employees and the State of
20 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
21 (g) and Code of Civil Procedure section 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**

24 **FAILURE TO PROVIDE MEAL PERIODS**

25 **(Lab. Code, §§ 226.7 and 512)**

26 **(Against all Defendants)**

27 41. Plaintiff realleges and incorporates by reference the allegations in the preceding
28 paragraphs.

1 42. Labor Code sections 226.7 and 512 provide that no employer shall employ any
2 person for a work period of more than five (5) hours without providing a meal period of not less
3 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
4 without a second meal period of not less than thirty (30) minutes.

5 43. Labor Code section 226.7 provides that if an employer fails to provide an
6 employee a meal period in accordance with this section, the employer shall pay the employee one
7 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
8 period is not provided in accordance with this section.

9 44. At all times relevant hereto, Plaintiff and aggrieved employees have regularly
10 worked shifts of more than five (5) hours and/or 10 hours in a workday. Plaintiff alleges
11 Defendant failed to provide legally compliant meal periods, in addition to impeding and/or not
12 relieving employees from all work duties during meal periods thereby preventing employees from
13 taking legally compliant meal periods. Specifically, Plaintiff and aggrieved employees had their
14 meal periods late, shortened, interrupted, and/or missed altogether as a consequence of
15 Defendant's pattern, practice, and policy of requiring employees to work through their meal
16 periods off-the-clock. Plaintiff and aggrieved employees also missed meal periods due to
17 Defendant understaffing and heavy workload. In addition, Defendant failed to provide second
18 meal periods to Plaintiff and aggrieved employees. Despite failing to provide compliant meal
19 periods, Defendant failed to pay one additional hour of pay at Plaintiff and aggrieved employees'
20 regular rate of pay for each workday that a meal period violation occurred.

21 45. By and through their actions, Defendant has intentionally and improperly denied
22 compliant meal periods or compensation in lieu thereof to Plaintiff and the aggrieved employees
23 in violation of Labor Code sections 226.7 and 512 and/or other statutes.

24 46. Defendant's Labor Code violations have caused Plaintiff and the aggrieved
25 employees to suffer, and continue to suffer, damages in amounts which are presently unknown,
26 but will be ascertained according to proof at trial.

27 47. Plaintiff, individually and on behalf of the aggrieved employees and the state of
28 California request recovery of civil penalties for violations of Labor Code sections 226.7 and 512

1 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

2 48. Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code section 2699,
3 subdivision (g) and Code of Civil Procedure section 1021.5.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR**
6 **FAILURE TO PROVIDE REST PERIODS**

7 **(Lab. Code, § 226.7)**

8 **(Against all Defendants)**

9 49. Plaintiff realleges and incorporates by reference the allegations in the preceding
10 paragraphs.

11 50. Labor Code section 226.7 and the applicable IWC Wage Orders require employers
12 to authorize and permit all non-exempt employees to take rest periods at the rate of ten (10)
13 minutes rest time per four (4) work hours or major fraction thereof.

14 51. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
15 provide non-exempt employees with rest periods in accordance with this section, the employer
16 shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for
17 each workday that the rest period is not provided.

18 52. At all times relevant hereto, Plaintiff and aggrieved employees have worked shifts
19 of more than three-and-a-half (3.5) hours in a workday. Plaintiff and aggrieved employees
20 consistently had their rest breaks missed, interrupted or shortened due to Defendant's uniform
21 policies and practices. For example, Defendant pressured Plaintiff and aggrieved employees to
22 forego rest breaks and continue working. In addition, due to Defendant's understaffing and heavy
23 workload, Plaintiff and aggrieved employees were unable to regularly take rest breaks. Defendant
24 also failed to pay one additional hour of pay at Plaintiff and aggrieved employees' regular rate of
25 pay for each workday that a rest period violation occurred.

26 53. By and through their actions, Defendant intentionally and improperly denied
27 compliant rest periods to Plaintiff and the aggrieved employees in violation of Labor Code section
28 226.7 and/or other statutes.

Specifically, Defendant failed to pay Plaintiff and the aggrieved employees all minimum, regular, and overtime wages owed immediately upon termination or within seventy-two (72) hours of resignation as a result of their instructions to work off-the-clock during meal periods without compensation and failure to pay overtime compensation for all overtime hours worked, among other things.

62. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees have suffered, and will continue to suffer, damages in amounts which are presently unknown, but will be ascertained according to proof at trial.

63. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved employees and the State of California for violations of Labor Code sections 201, 202, and 203 during the PAGA period, in a sum as provided by the Labor Code and/or other statutes.

64. Plaintiff, individually and on behalf of the aggrieved employees and the State of California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g) and Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS

(Lab. Code, §§ 226, subd. (a), (e), 226.3, 1174, 1174.5)

(Against all Defendants)

65. Plaintiff realleges and incorporates by reference the allegations in the preceding paragraphs.

66. Labor Code section 226, subdivision (a), requires employers to furnish each employee with a statement that accurately reflects, *inter alia*, gross wages earned, total hours worked, net wages earned, name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Labor Code section 226, subdivision (e), provides that if an employer knowingly and intentionally fails to provide a statement itemizing the foregoing information, and the employee suffers an injury as a result of the employer's failure to comply with subdivision

1 (a), then the employee is entitled to recover the greater of all actual damages or fifty dollars
2 (\$50.00) for each subsequent violation, up to four thousand dollars (\$4,000.00).

3 67. Labor Code 226.3 provides that any employer who violates subdivision (a) of
4 Labor Code section 226 shall be subject to a civil penalty in the amount of two hundred fifty
5 dollars (\$250.00) per employee per initial violation and one thousand dollars (\$1,000.00) per
6 employee for each subsequent violation, for which the employer fails to provide the employee a
7 wage deduction statement or fails to keep the records required in subdivision (a) of Labor Code
8 section 226. The civil penalties provided for in this section are in addition to any other penalty
9 provided by law.

10 68. An employee is deemed to suffer injury if the employer fails to provide an accurate
11 wage statement containing all of the required information set forth in Labor Code section 226,
12 subdivision (a). (Lab. Code, § 226, subd. (e)(2).)

13 69. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
14 location in California or at the plant or establishment at which the employees are employed,
15 payroll records showing the hours worked daily and the wages paid to each employee.

16 70. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's
17 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
18 penalty of one hundred dollars (\$100.00) per initial violation and two hundred dollars (\$200.00)
19 per subsequent violation per pay period, per aggrieved employee that would be imposed pursuant
20 to Labor Code section 2699 for a violation of section 1174, subdivision (d).

21 71. The IWC Wage Orders require that every employer shall keep accurate
22 information with respect to each employee, including, but not limited to, time records showing
23 the total daily hours worked by each employee, the total hours worked in each payroll period, and
24 applicable rates of pay.

25 72. Plaintiff is informed and believes that Defendant willfully and intentionally failed
26 to make and/or keep records which accurately reflect the hours worked by Plaintiff and aggrieved
27 employees. Specifically, Plaintiff believes that Defendant's records fail to include, inter alia: (1)
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1 actual hours worked; (2) total hours worked; (3) number of hours worked at each hourly rate; (4)
2 gross wages earned; and (5) net wages earned.

3 73. In addition, the omission of time worked make it difficult for employees to
4 determine whether they were paid all wages due without complicated calculations and/or
5 reconstruction of records required to be maintained by the employer.

6 74. Plaintiff is informed and believes, and based thereon alleges, that Defendant
7 willfully failed to maintain accurate payroll records for Plaintiff and the aggrieved employees by
8 failing to accurately reflect the hours worked by and wages paid to Plaintiff and the aggrieved
9 employees. Specifically, Defendant's records do not accurately reflect Plaintiff's and the
10 aggrieved employees' hours worked when they worked off-the-clock during their meal breaks
11 without compensation, among other things.

12 75. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
13 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
14 will be ascertained according to proof at trial.

15 76. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
16 employees and the State of California for violations of Labor Code sections 226, 1174, and
17 pursuant to Labor Code sections 226.3 and 1174.5 during the PAGA period, in a sum as provided
18 by the Labor Code and/or other statutes.

19 77. Plaintiff, individually and on behalf of the aggrieved employees and the State of
20 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
21 (g) and Code of Civil Procedure section 1021.5.

22 **SIXTH CAUSE OF ACTION**

23 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
24 **REIMBURSE BUSINESS EXPENSES**

25 **(Labor Code § 2802)**

26 **(Against all Defendant)**

27 78. Plaintiff realleges and incorporates by reference the allegations in the preceding
28 paragraphs.

1 79. Labor Code section 2802 provides that an employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence
3 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

4 80. Defendant failed to indemnify Plaintiff and aggrieved employees for all necessary
5 expenditures or losses incurred by Plaintiff and aggrieved employees in direct consequence of the
6 discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff and aggrieved
7 employees for expenditures they incurred on their behalf, including, but not limited to, use of
8 their personal vehicles for business purposes and the cost of cleaning and maintenance of their
9 work uniforms. In violation of the Labor Code, Defendant failed to reimburse Plaintiff and
10 aggrieved employees for these business-related expenditures.

11 81. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
12 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
13 will be ascertained according to proof at trial.

14 82. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
15 employees and the State of California for violations of Labor Code section 2802 during the PAGA
16 period, in a sum as provided by the Labor Code and/or other statutes.

17 83. Plaintiff, individually and on behalf of the aggrieved employees and the State of
18 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
19 (g) and Code of Civil Procedure section 1021.5.

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1. For civil penalties pursuant to the PAGA in an amount according to proof;
2. For reasonable attorney's fees and costs, pursuant to the PAGA and California Code of Civil Procedure section 1021.5; and
3. For such other and further relief as this Court may deem just and proper.

MAHONEY LAW GROUP, APC


Kevin Mahoney
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Attorneys for Plaintiff RICARDO REAL