

COMPLAINT FOR DAMAGES & EQUITABLE REMEDIES

companies (hereinafter referred to as "Defendants") within the State of California.

II. PARTIES/VENUE

2. Plaintiff Margarita Vasquez was at all relevant times an employee of Defendants.

3. Plaintiff is informed and believes, and upon that basis alleges, Defendant Kimura Enterprises, Inc. is a California corporation authorized to and regularly and customarily doing business in the State of California. At all relevant times, Kimura Enterprises employed Plaintiff Margarita Vasquez.

4. Plaintiff is informed and believes, and upon that basis alleges, Defendant SushiStop Corporation is a California corporation authorized to and regularly and customarily doing business in the State of California. At all relevant times, SushiStop employed Plaintiff Margarita Vasquez.

5. Plaintiff brings this action pursuant to Labor Code §§ 98.6, 201, 203, 204, 226, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1 and 1199 seeking wages, penalties, injunctive, declaratory, and other equitable relief, and reasonable attorneys' fees and costs.

6. For at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to pay wages for all hours worked.

7. For at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to provide employees meal and rest breaks.

8. For at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to provide employees with accurate itemized wage statements.

9. Plaintiff, pursuant to Business and Professions Code §§ 17200 – 17208, also seeks injunctive relief, restitution and disgorgement of all benefits Defendants enjoyed from their unlawful policies and practices.

10. The true names and capacities of defendants DOES 1 through 100 are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff will seek leave to amend her complaint to allege such names and capacities as soon as they are ascertained. Plaintiff is informed and believes, and upon that basis alleges, that each of the fictitiously named Defendants is in some manner responsible, liable, and/or obligated to Plaintiff in connection with the acts alleged herein.

11. Plaintiff is informed and believes and upon that basis alleges DOES 51 through 100 are the controlling entities and/or alter egos of the other Defendants, and of each other, and ratified, authorized, and/or directed the conduct of Defendant Kimura Enterprises and Defendant SushiStop. In doing the things hereinafter alleged, the Defendants, and each of them, acted as the agents, servants and employees of their co-defendants, who acted within the course and scope of their agency and employment, and with the knowledge, consent and approval of their co-defendants whereby their conduct was ratified by their co-defendants.

12. Venue as to each defendant is proper in this judicial district. The claims arose within this judicial district. Pursuant to California Code of Civil Procedure Sections 393, 395.5 and Government Code Section 12965(b), jurisdiction and venue are proper in the Superior Court, State of California, County of Los Angeles, Central Judicial District.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. All legal prerequisites for proceeding with the claims contained in this complaint have been met.

14. Plaintiff sent a letter to the Labor Workforce Development Agency and to Defendants on April 30, 2021, pursuant to Labor Code section 2699. At least sixty-five (65) days have passed since the postmark date of that notice and the LWDA has not indicated that it intends to investigate the alleged violations. Therefore, pursuant to Labor Code section 2699.3(a)(2)(A), Plaintiff may commence a civil action.

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IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

15. For the past four years, Plaintiff Vasquez has worked for Defendants as a cook. Throughout her tenure with Defendants, Plaintiff, as well as similarly situated employees were mandated to consistently work approximately thirty minutes to an hour and a half past their scheduled end-time to clean the kitchen area, the refrigerator and grill and prepare vegetables for the next day after clocking-out. Neither Plaintiff, nor any similarly situated employees, were ever compensated for these post-shift, off-the-clock daily duties.

16. Plaintiff, as well as similarly situated employees, were not provided with uninterrupted meal periods when working over five hours in a shift. Neither Plaintiff, nor similarly situated employees, were ever compensated for these missed meal breaks. In addition, Plaintiff, as well as similarly situated employees, were not provided with rest breaks. Neither Plaintiff, nor any similarly situated employees, were ever compensated for these missed rest breaks. Defendants deny Plaintiff, and similarly situated employees, breaks because the company maintains strict guidelines regarding the completion of food orders as they come in. Plaintiff, as well as similarly situated employees had to forego their meal and rest breaks in accordance with Defendants' strict requirements. Plaintiff, as well as similarly situated employees, were not provided with meal breaks. Outside of always having to complete food orders as they come in, Plaintiff, as well as similarly situated employees were forced to eat while on duty if the workload permitted them to do so or forego a meal break altogether.

17. Plaintiff, and similarly situated employees, are also routinely not compensated time and a half for work in a single shift that exceeds 8 hours or for labor hours within a week that exceeds 40 hours. Defendants also employ a rounding system for computing labor hours that violates Labor Code provisions and regulations applicable to rounding time and in this instance, unlawfully disadvantages Plaintiff and similarly situated employees by depriving them of labor time they would be entitled to receive if the rounding system used by Defendants was legally compliant.

1 18. As a result of these facts, Defendants violated time and pay record keeping
2 requirements that mandate the accurate reporting of hours worked and wages earned by
3 its employees. In its pay records, Defendants failed to record the total number of hours
4 worked and the number of breaks denied; causing the records to be incomplete and
5 inaccurate. Defendants provided its employees inaccurate and/or incomplete wage
6 statements.

7 19. Plaintiff contends that Defendants treated its employees with willful
8 disregard of its obligations under the California wage and hour law.

9 20. Plaintiff and other employees faced retaliation and discrimination for
10 complaining about unpaid wages and/or complaining about their missed breaks. Plaintiff
11 complained several times to her supervisor, William Doe, regarding not being able to
12 take uninterrupted meal breaks. After lodging multiple complaints Plaintiff's hours were
13 reduced from full-time 5 days a week to 3 days a week then 2 days a week until she was
14 working less than typical part-time.

15 21. Plaintiff maintains that Defendants failed to timely pay all wages earned.

16 22. On multiple occasions Ms. Vasquez addressed having to perform duties
17 during her meal and rest breaks, as well as other inconsistencies with the way her work
18 time was being calculated with her immediate supervisor(s) and other layers of
19 management. Ms. Vasquez's voiced concerns were ignored by Defendants and instead
20 retaliated and harassed Ms. Vasquez ultimately leading to a decline in her hours.

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FIRST CAUSE OF ACTION
FOR FAILURE TO PAY WAGES AND/OR OVERTIME WAGES
AGAINST DEFENDANTS AND DOES 1 THROUGH 100

23. The allegations set forth in paragraphs 1 through 22 are realleged and incorporated by reference as though fully set forth herein.

24. At all times relevant herein, Defendants were required to compensate Plaintiff for all regular hours worked, and overtime compensation when she worked over eight (8) hours per day and/or forty (40) hours per week, and double time when she worked over twelve (12) hours per day.

25. As a pattern and practice, Defendants regularly required Plaintiff to work more hours and different hours than were scheduled and recorded on her time sheets without payment of wages, which resulted in Defendants failing to pay Plaintiff at least the required wages for all hours worked.

26. Plaintiff was required to work on a regular and consistent basis without receiving compensation for all hours worked at her regular rate or if more than eight (8) hours a day and/or forty (40) hours per week and/or seven days a week, at the applicable overtime rate. Plaintiff has not been compensated for this time. Defendants also had a consistent policy of failing to pay Plaintiff for all hours worked.

27. By their policy of requiring Plaintiff to work without receiving compensation for all hours worked at their regular rate, or if in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek and/or seven days a week, without compensating Plaintiff at the rate of time and one-half (1 ½), Defendants willfully violated the provisions of Labor Code § 1194.

28. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of wages and/or overtime in amounts to be determined at trial, and is entitled to recovery of such amounts, plus liquidated damages, interest and penalties thereon, and attorneys' fees and costs pursuant to Labor Code § 1194.

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SECOND CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL AND/OR REST BREAKS
AGAINST DEFENDANTS AND DOES 1 THROUGH 100

29. The allegations set forth in paragraphs 1 through 28 are realleged and incorporated by reference as though fully set forth herein.

30. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hour work period.

31. Employers must authorize and permit rest breaks. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked.

32. Defendants failed to provide Plaintiff and others with timely meal breaks of not less than thirty (30) minutes as required by the Labor Code during their employment. Defendants failed to authorize and permit Plaintiff and others to take rest breaks of not less than ten (10) minutes as required by the Labor Code during their employment. Plaintiff and others were required to work during their meal breaks or forego taking a meal break altogether.

33. Pursuant to Labor Code § 226.7, Plaintiff is entitled to damages in an amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at trial. Plaintiff is also entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial.

THIRD CAUSE OF ACTION
FOR VIOLATION OF LABOR CODE § 226
AGAINST DEFENDANTS AND DOES 1 THROUGH 100

34. The allegations set forth in paragraphs 1 through 33 are realleged and incorporated by reference as though fully set forth herein.

35. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a) on each and every wage statement that should have

1 been provided to Plaintiff. By failing to keep adequate records as required by §§ 226 and
2 1174 (d) of the Labor Code, Defendants have injured Plaintiff and made it difficult to
3 calculate the unpaid wages earned and losses and expenditures not indemnified by
4 Defendants (including wages, interest, and penalties thereon) due to Plaintiff.

5 36. Section 1174 of the California Labor Code requires Defendant to maintain
6 and preserve, in a centralized location, among other items, records showing the names
7 and addresses of all employees employed, payroll records showing the hours worked
8 daily by and the wages paid to its employees. Defendant has knowingly and intentionally
9 failed to comply with Labor Code § 1174. Defendant's failure to comply with Labor
10 Code § 1174 is unlawful pursuant to Labor Code § 1175.

11 37. IWC Wage Orders 4-2001(7), 4-2000(7), require Defendant to maintain
12 time records showing, among other things, when the employee begins and ends each
13 work period, meal periods, split shift intervals and total daily hours worked in itemized
14 wage statements, and must show all deductions and reimbursements from payment of
15 wages, and accurately report total hours worked by Plaintiff.

16 38. Plaintiffs request relief as described herein and below.

17 **FOURTH CAUSE OF ACTION**
18 **FOR UNFAIR BUSINESS PRACTICES IN VIOLATION OF**
19 **BUSINESS & PROFESSIONS CODE § 17200 AGAINST**
20 **DEFENDANTS AND DOES 1 THROUGH 100**

21 39. The allegations set forth in paragraphs 1 through 38 are realleged and
22 incorporated by reference as though fully set forth herein.

23 40. Defendants engaged in unfair, unlawful, fraudulent, deceptive, untrue,
24 and/or misleading business practices through the following, among others:

25 (a) Defendants failed to compensate Plaintiff with the true and/or correct
26 and/or full amount of his earned hours and overtime pay, in violation of
27 Labor Code § 510 and IWC Wage Order No. 4 §§ 11, 12.

28 (b) Defendants failed to provide Plaintiff with all of her mandatory meal

and/or rest periods as required by California law in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order No. 4 §§ 11, 12.

41. Defendants engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices in direct violation of California Bus. & Prof. Code § 17200 *et seq.*

42. Defendants' willful and/or reckless conduct constituted unfair business practices and acts because the harm to the general public outweighed any utility that its conduct may have produced.

43. As a direct result of the conduct, act and omissions of Defendants and DOES 1 through 100, and each of them, Plaintiff has been harmed and damaged in an amount to be shown at the time of trial, together with prejudgment interest thereon from the time owed until paid, all within an amount within the jurisdictional limits of this Court.

44. Plaintiff is also entitled to all penalties provided by Cal. Bus. & Prof. Code § 17206.

45. Cal. Bus. & Prof. Code § 17205 declares, unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

46. The acts of Defendants and DOES 1 through 100, and each of them, were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying the award of punitive and exemplary damages in an amount to be determined at the time of trial pursuant to California Civil Code § 3294(a) and (b).

47. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

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FIFTH CAUSE OF ACTION
FOR RETALIATION (Labor Code § 98.6)
AGAINST DEFENDANTS AND DOES 1 THROUGH 100

48. The allegations set forth in paragraphs 1 through 47 are realleged and incorporated by reference as though fully set forth herein.

49. Labor Code Section 98.6 protects an employee from, inter alia, retaliation, discrimination or any adverse action when the employee makes a “written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699 . . . or . . . because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

50. “Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment” because the employee engaged in any conduct delineated in *inter alia*, Labor Code Section 98.6 or “because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.”

51. An employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor. In addition to other remedies available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation of Labor Code Section 98.6.

52. Throughout Plaintiff’s employment with Defendants, she has complained about: (a) not getting paid for all hours worked and (b) not receiving proper meal and rest breaks.

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53. Upon making complaints, Defendants retaliated, discriminated against and subjected Plaintiff to adverse actions that included a drastic reduction of hours.

54. Defendants engaged in conduct that, taken as a whole, materially and adversely affected the terms and conditions of Plaintiff's employment.

55. Plaintiff's wage and hour related complaints were a motivating reason for Defendants' retaliation.

56. Numerous PAGA Employees have been harmed. Defendants' retaliation is a substantial factor in causing that harm.

57. Plaintiff, on behalf of herself and other similarly situated former and present employees, seek penalties pursuant to PAGA, as well as civil penalties in the amount of \$10,000 per occurrence, in addition to any recovery of lost wages resulting from the retaliation.

58. Plaintiff and other currently PAGA employees have incurred and continue to incur legal expenses and attorneys' fees in an amount according to proof.

SIXTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO LABOR CODE SECTION 2699
AGAINST DEFENDANTS
AND DOES 1 THROUGH 100

59. The allegations set forth in paragraphs 1 through 59 are realleged and incorporated by reference as though fully set forth herein.

60. Plaintiff, and aggrieved employees, hereby seek recovery of civil penalties as prescribed by the *Labor Code* Private Attorneys General Act of 2004 on behalf of themselves and other aggrieved employees against whom one or more of the violations of the *Labor Code* were committed.

61. On April 30, 2021, Plaintiff sent a certified letter to the Labor Workforce and Development Agency ("LWDA") and Defendants, as prescribed by *Labor Code* § 2699.3 regarding Plaintiff's claims for penalties pursuant to Labor Code section 226.8, Labor Code § 203, Labor Code § 558, rest and recovery periods, itemized wage

statements and unauthorized withholdings/deductions. At least sixty-five (65) days have passed since the postmark date of that notice and the LWDA has not indicated that it intends to investigate the alleged violations. Therefore, pursuant to *Labor Code* § 2699.3(a)(2)(A), Plaintiff may commence a civil action.

62. Plaintiff and other aggrieved employees are entitled to penalties for the herein alleged violations, to be proven at the time of trial, allocated 75% to the LWDA and 25% to the affected employees, subject to the following formula:

- a. \$100.00 for the initial violation per employee per pay period; and
- b. \$200.00 for each subsequent violation per employee per pay period.

63. The remedies provided under PAGA are intended to be cumulative of other available remedies. *Lab. Code* § 2699(g)(1).

64. Under Labor Code section 226.8, the Court shall require payment of a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation.

65. Plaintiff and the aggrieved employees are also entitled to any and all unpaid wages from Defendants for violating or causing the violations set forth in Plaintiff's PAGA letter pursuant to *Labor Code* § 558, which are payable directly to the affected employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment, including joint and several liability, against each defendant as follows:

1. For compensatory damages, including lost wages, according to proof on each cause of action;
2. For liquidated damages, pursuant to *California Labor Code* § 1194.2;
3. For penalties pursuant to the Labor Code;
4. That the Court declare, adjudge, and decree that Defendants violated *California Labor Code* §§204, 1194, 1194.2, 1197, and 1197.1 and the Wage Order willfully failing to pay at least minimum wages or the agreed upon wages for all hours

1 worked as required by law;

2 5. For general unpaid wages at regular wage rates and such general and special
3 damages as may be appropriate;

4 6. For reasonable attorney's fees and costs of suit incurred herein pursuant to
5 *California Labor Code* § 226, 1194(a), and § 2699.

6 7. That the Court declare, adjudge, and decree that Defendants violated the
7 record-keeping provisions of *California Labor Code* § 226(a), and willfully failed to
8 provide accurate itemized wage statements thereto;

9 8. For statutory penalties pursuant to *California Labor Code* § 226(e); and

10 9. For civil penalties pursuant to *California Labor Code* §§ 98.6, 226(a),
11 226.3, 1199, 2699;

12 10. That the Court declare, adjudge, and decree that Defendant and DOES 1-
13 100 violated *California Business and Professions Code* §§ 17200, *et seq.*;

14 11. For restitution of unpaid wages to Plaintiff, and prejudgment interest from
15 the day such amounts were due and payable;

16 12. For the appointment of a receiver to receive, manage and distribute any and
17 all funds disgorged from Defendants and determined to have been wrongfully acquired
18 by Defendants as a result of violations of *California Business and Professions Code* §§
19 17200, *et seq.*;

20 13. That the Court declare, adjudge, and decree that Defendants violated
21 *California Labor Code* §§ 201, 202 and 203 by willfully failing to pay all compensation
22 owed at the time of termination of the employment of Plaintiffs;

23 14. For Plaintiff's statutory wage penalties pursuant to *California Labor Code*
24 § 203;

25 15. That the Court declare, adjudge, and decree that Defendants' employment
26 practices violated one or more sections of the *Labor Code*;

27 16. For any and all unpaid wages due to Plaintiffs and other employees pursuant
28 to *Labor Code* § 558;

17. For an award of interest, including prejudgment interest, at the legal rate;
18. For an award of attorneys' fees;
19. For costs of suit incurred; and
20. For such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

21. Plaintiffs demand jury trial of their claims to the extent authorized by law.

DATE: September 2, 2021

T. JOSHUA RITZ & ASSOCIATES, INC.

T. JOSHUA RITZ
LALEH B. SHOKOHI
ATTORNEYS FOR PLAINTIFFS