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Superior Court of California,
County of Monterey
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Attorneys for Plaintiff DESTINY HENDERSON-HUDGINS,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

DESTINY HENDERSON-HUDGINS,
individually and on behalf of herself and
all others similarly situated,

Plaintiff,

v.

BUBBA GUMP SHRIMP CO.
RESTAURANTS, INC., a Delaware
Corporation; and DOES 1-50, inclusive,
Defendants.

Case No. 21CV002050

PAGA REPRESENTATIVE ACTION

Assigned To:

Dept.:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, DESTINY HENDERSON-HUDGINS, on behalf of herself and in her
2 representative capacity as private attorney general, complains of defendants BUBBA GUMP
3 SHRIMP CO. RESTAURANTS, INC., a Delaware Corporation, and DOES 1-50, inclusive
4 (collectively “Defendants”) as follows:

5 I. INTRODUCTION

6 1. This is a representative action for recovery of penalties under the Private Attorneys General
7 Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved
8 employees” to bring a lawsuit as a representative action on behalf of themselves and all other
9 current and former aggrieved employees, to recover civil penalties and address an employer’s
10 violations of the California Labor Code.

11 2. Plaintiff brings this action pursuant to the PAGA on a representative basis. All current and
12 former hourly, non-exempt employees in Defendants’ California restaurants are aggrieved
13 employees.

14 3. Plaintiff brings this suit on behalf of herself and all other current and former non-exempt
15 employees working for Defendants in their restaurants in California during the relevant time period
16 to recover civil penalties and address the employer’s violations of the California Labor Code (the
17 “Aggrieved Non-Exempt Employees”).

18 4. In addition, Plaintiff seeks to represent a subgroup of employees that received tips or were
19 supposed to receive tips during their employment (the “Tipped Aggrieved Employees”).

20 5. Plaintiff was employed by Defendants as an hourly, non-exempt restaurant employee in
21 the State of California.

22 6. In this case, Defendants violated various provisions of the California Labor Code and
23 relevant IWC Wage Orders. As set forth below, Defendants implemented policies and practices
24 which led to Defendants’ (1) failure to accurately calculate and pay all wages owed including
25 minimum wage, (2) failure to pay overtime; (3) failure to provide lawful meal periods, (4) failure
26 to provide compensation when lawful meal periods were not provided; (5) failure to authorize and
27 permit lawful rest periods; (6) failure to provide compensation when lawful rest periods were not
28 provided; (7) failure to pay reporting time wages; (8) unlawful deductions; (9) failure to timely

1 pay wages owed upon separation from employment; (10) failure to furnish accurate itemized wage
2 statements; (11) failure to reimburse necessary expenses; and (12) unlawful mandatory tip pooling.

3 7. Plaintiff in her representative capacity seeks civil penalties on behalf of herself and other
4 aggrieved employees pursuant to PAGA for Defendants failure to comply with California Labor
5 Code and IWC Wage Order requirements.

6 8. As set forth in greater detail herein, Defendants engaged in conduct and adopted policies
7 that were and continue to be in violation of the California Labor Code and applicable law.
8 Plaintiff, on behalf of herself and all other Aggrieved Non-Exempt Employees, brings this
9 PAGA action and seeks penalties for violations of the California Labor Code, including without
10 limitation sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.7, 351, 510, 512, 558, 1174,
11 1174.5, 1194, 1194.2, 1197, 1198, 2802, 2698 *et. seq.*, applicable IWC California Wage Orders
12 (including Wage Order 5-2001) and California Code of Regulations, Title 8, section 11000 *et*
13 *seq.*

14 9. This action is timely because Plaintiff suffered from a violation or numerous violations of
15 the California Labor Code within one year of the date on which a PAGA notice was sent to the
16 LWDA via online submission. More than 65 days have passed and no response has been
17 received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached hereto
18 as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting Plaintiff
19 to proceed with this action in a representative capacity.

20 II. JURISDICTION AND VENUE

21 10. The Superior Court of the State of California has jurisdiction in this matter because
22 Plaintiff is a citizen and resident of the State of California and Defendants are citizens and
23 residents of, and/or regularly conduct business in, California. Further, no federal question is at
24 issue because the claims are based solely on California law.

25 11. Venue is proper in this judicial district and the County of Monterey, California because
26 Defendants' maintain offices and facilities and transact business in the County of Monterey, and
27 Defendants' illegal policies and practices which are the subject of this action were applied, at
28 least in part, in the County of Monterey.

III. PARTIES

12. Upon information and belief, Defendant, Bubba Gump Shrimp Co. Restaurants, Inc., is a Delaware Corporation in good standing that is authorized to do business throughout the state of California. Bubba Gump Shrimp Co. Restaurants, Inc.'s headquarters are located at 1510 West Loop South, Houston, TX 77027.

13. Bubba Gump Shrimp Co. Restaurants, Inc. operates 40 restaurants worldwide, including 6 in California. Bubba Gump Shrimp Co. Restaurants, Inc. is a seafood restaurant chain.

14. Plaintiff Destiny Henderson-Hudgins, during the liability period, was a resident of Monterey County, California.

15. Plaintiff was employed by Defendants during the liability period as a Hostess in its restaurant on Cannery Row, Monterey, CA.

16. During her employment, Plaintiff earned an hourly wage and tips.

17. Plaintiff and the members of the aggrieved group were employed by Defendants as non-exempt employees, however titled, in Defendants' restaurants during the liability period in the state of California. (the "Aggrieved Non-Exempt Employees").

18. Plaintiff is an Aggrieved Non-Exempt Employee.

19. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

20. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that

1 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly,
2 aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
3 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
4 of the liability of the Defendants as alleged herein.

5 22. Plaintiff is further informed and believes, and thereon alleges, that at all times material
6 herein, each Defendant was completely dominated and controlled by its co-Defendants and each
7 was the alter ego of the other. Whenever and wherever reference is made in this complaint to
8 any conduct by Defendant or Defendants, such allegations and references shall also be deemed to
9 mean the conduct of each of the Defendants, acting individually, jointly, and severally.

10 Whenever and wherever reference is made to individuals who are not named as Defendants in
11 this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant
12 times acted on behalf of Defendants named in this complaint within the scope of their respective
13 employments.

14 IV. FACTUAL ALLEGATIONS

15 23. During the relevant time frame, Defendants compensated Plaintiff, and the Aggrieved
16 Non-Exempt Employees based upon an hourly wage.

17 24. During the relevant time frame, some Aggrieved Non-Exempt Employees also earned
18 tips, in addition to their hourly wages, during the performance of their job duties. Such
19 aggrieved employees are referred to as "Tipped Aggrieved Employees."

20 25. Plaintiff and the Aggrieved Non-Exempt Employees are and at all times pertinent hereto,
21 have been non-exempt employees within the meaning of the California Labor Code, and the
22 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
23 protections of the IWC Wage Orders and the Labor Code.

24 26. Plaintiff was employed as an hourly non-exempt restaurant employee from March 2019
25 through March 2020 when Covid-19 closures affected the restaurant at which the Plaintiff
26 worked. Plaintiff returned to work in October 2020 and worked until November 2020 when she
27 was terminated.

28 27. Plaintiff provided customer service and restaurant serving functions as a Hostess at

Defendants' restaurant location on Cannery Row in Monterey, California.

28. The Aggrieved Non-Exempt Employees worked as employees of Defendants throughout the state of California during the liability period.

29. Plaintiff typically worked 25-35 hours per week before the Covid-19 closures and 9-12 hours a week after the Covid-19 closures were lifted.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

Failure to Pay Minimum Wages

31. Labor Code § 1182.12 sets the minimum wage.

32. Labor Code § 1194 provides that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage compensation or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

33. Labor Code § 1197 states that "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

34. Labor Code § 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

35. The Labor Code and the Wage Order 5-2001 require that employers pay employees at least minimum wage for each hour worked.

36. Plaintiff and the Aggrieved Non-Exempt Employees were not exempt from the requirement to be paid minimum wages in accordance with the law.

37. Plaintiff alleges that Defendants violated Labor Code sections 1194, 1197, 1198 and the IWC Wage Order 5-2001 by failing to pay all wages owed including minimum wages to

1 Aggrieved Non-Exempt Employees.

2 38. Plaintiff alleges that, during the relevant time, Plaintiff and the Aggrieved Non-Exempt
3 Employees were required to work hours for which they were not compensated at least minimum
4 wage in violation of the law by virtue of Defendants' policies, practices, procedures, labor
5 models, staffing models, and labor budgets.

6 39. In addition, upon information and belief, Defendants often manipulated or changed the
7 time punch data for Plaintiff and the Aggrieved Non-Exempt Employees to make it appear as if
8 compliant meal periods had been taken. Such time during purportedly provided meal periods
9 constitutes hours worked for which Plaintiff and the Aggrieved Non-Exempt Employees should
10 have been paid.

11 40. Defendants knew or should have known that Plaintiff and the Aggrieved Non-Exempt
12 Employees were required to work off-the clock but did not pay Aggrieved Non-Exempt
13 Employees for such hours worked.

14 41. As a result of Defendants' conduct in not paying Plaintiff and the Aggrieved Non-
15 Exempt Employees all wages earned, the Plaintiff and the Aggrieved Non-Exempt Employees
16 have been deprived of minimum wages for off the clock hours for which they were not
17 compensated.

18 **Failure to Pay Overtime**

19 42. The Labor Code and the Wage Order 5-2001 require that employers pay employees at
20 least minimum wage for every hour worked, and overtime for hours worked over eight hours in a
21 day and over forty hours in a week.

22 43. Labor Code §510, 515 requires employers to pay employees one-and-one-half (1-1/2)
23 times the employee's regular rate of pay for all those hours worked in excess of forty (40) hours
24 in one work week and/or in excess of eight (8) hours in one work day, and two (2) times the
25 regular rate of pay for hours worked in excess of twelve (12) hours in a day or more than eight
26 (8) hours on the seventh day in a workweek, unless such employees are exempt from the
27 requirements of the Wage Order.

28 44. Plaintiff, and the Aggrieved Non-Exempt Employees were not exempt from the

1 requirement to be paid overtime wages in accordance with the law.

2 45. Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1197, 1198 and
3 the IWC Wage Order by failing to pay all wages owed including overtime to Aggrieved Non-
4 Exempt Employees.

5 46. Plaintiff alleges that during the relevant time, Plaintiff and the Aggrieved Non-Exempt
6 Employees were required to work hours for which they were not compensated, including
7 overtime, in violation of the law by virtue of Defendants' policies, practices, procedures, labor
8 models, staffing models, and labor budgets.

9 47. At all times relevant, Plaintiff and the Aggrieved Non-Exempt Employees consistently
10 worked hours for which they were not paid because Plaintiff and the Aggrieved Non-Exempt
11 Employees were required to work off the clock, including without limitation during purportedly
12 provided meal periods.

13 48. Upon information and belief, Defendants systematically deducted hours worked from
14 each workday over five hours for purported meal periods even when duty-free time was not in
15 fact provided.

16 49. Plaintiff is informed and believes that Defendants and its managers were aware that
17 Plaintiff and the Aggrieved Non-Exempt Employees were working off the clock and that they
18 should have been paid for this time.

19 50. In addition, upon information and belief, Defendants failed to pay Aggrieved Non-
20 Exempt Employees for overtime hours worked at the proper rate, because Defendants failed to
21 include all applicable forms of compensation in the regular rate.

22 51. As a result of Defendants' conduct in requiring Plaintiff and the Aggrieved Non-Exempt
23 Employees to work hours in excess of eight (8) hours per work day and/or forty (40) in one work
24 week without paying them one-and-one-half (1-1/2) times their regular hour rate (or double-time
25 hours for hours worked in excess of twelve (12) hours per day or for hours over eight on the
26 seventh day), Defendants violated the Labor Code and the Wage Order.

27 **Failure to Provide Timely, Legally Compliant Meal Periods**

28 52. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period

1 of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in
2 which the employee is relieved of all of his or her duties, except that when a work period of not
3 more than six (6) hours will complete the day's work the meal period may be waived by mutual
4 consent of the employer and employee.

5 53. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a
6 work period of more than ten (10) hours without providing a second meal break of not less than
7 thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
8 break may only be waived by mutual consent, and if the employee did not waive his or her first
9 meal period, and the employee's work day will not exceed twelve hours.

10 54. During the liability period, Defendant failed to provide Plaintiff and Aggrieved Non-
11 Exempt Employees with timely and uninterrupted first meal periods of not less than thirty (30)
12 minutes within the first five hours of a shift.

13 55. During the liability period, Defendant also failed to provide Plaintiff and the Aggrieved
14 Non-Exempt Employees with timely and uninterrupted second meal periods of not less than
15 thirty (30) minutes on shifts longer than ten hours.

16 56. Indeed, during the relevant time, as a consequence of Defendant's staffing and
17 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
18 Plaintiff and the Aggrieved Non-Exempt Employees were not provided with legally required
19 uninterrupted meal periods.

20 57. Upon information and belief, Defendants often manipulated or changed the time
21 punch data for Plaintiff and the Aggrieved Non-Exempt Employees to make it appear as if
22 compliant meal periods had been taken.

23 58. In addition, Defendants put the onus on employees to provide their own meal
24 breaks and authorize and permit their own rest periods by failing to provide or authorize and
25 permit such breaks in the first instance.

26 59. Upon information and belief, Defendants also maintained a policy which provides
27 that if an employee fails to inform a supervisor of a non-compliant meal or rest period, he or she
28 voluntarily waives that meal or rest break.

1 60. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded
2 or discouraged the taking of lawful meal and rest breaks through its practices, policies, and
3 procedures.

4 61. On information and belief, Plaintiff and Aggrieved Non-Exempt Employees did
5 not waive their rights to meal periods under the law.

6 62. Defendants violated Labor Code § 226.7, 512 and IWC Wage Order 5-2001 by
7 such conduct.

8 63. Pursuant to Labor Code § 226.7, Plaintiff and the Aggrieved Non-Exempt
9 Employees are entitled to recover one (1) hour of premium pay for each day in which a meal
10 period violation occurred.

11 64. Plaintiff and the Aggrieved Non-Exempt Employees were not paid one hour of pay at
12 their regular rate for each day that a first or second meal period was not lawfully provided. This
13 is a further violation of Labor Code § 226.7, 512 and IWC Wage Order 5-2001.

14 **Failure to Authorize and Permit Legally Compliant Rest Breaks**

15 65. This action is brought under Labor Code §226.7 and Section 12(A) of Wage Order 5,
16 which provides that employers shall authorize and permit employees to take a rest period of ten
17 (10) minutes for each four (4) hours, or major fraction thereof, worked.

18 66. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage
19 Order 5, which provides that if an employer fails to authorize and permit a lawful rest period, the
20 employer shall pay the employee one hour of pay for each work day that a rest period was not
21 authorized and permitted.

22 67. Plaintiff and the Aggrieved Non-Exempt Employees were systematically not authorized
23 and permitted to take legally compliant net ten (10) minute rest periods for every four hours
24 worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198,
25 and IWC Wage Order 5.

26 68. Employees were not authorized and permitted to take a net ten minute rest period as
27 required by law, in part because Defendants maintained and enforced scheduling and staffing
28 practices, policies and practices, and imposed work demands that frequently required employees

1 to forego their breaks or return before a net ten minutes of rest.

2 69. As set forth above, Defendants put the onus on employees to provide their own meal
3 breaks and authorize and permit rest periods by failing to provide or authorize and permit such
4 breaks in the first instance.

5 70. Defendants also maintained a policy which provides that if an employee fails to inform a
6 supervisor of a non-compliant meal or rest period, he or she voluntarily waives that meal or rest
7 break.

8 71. In addition, upon information and belief, Defendant's policy provided that employees
9 could not leave the premises during rest periods. This exercise of employer control over
10 employees during rest breaks is inconsistent with the mandates of the law.

11 72. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded or
12 discouraged the taking of lawful meal and rest breaks through its practices, policies, and
13 procedures.

14 73. Pursuant to Labor Code § 226.7, 1198, and the Wage Order, Plaintiff and the Aggrieved
15 Non-Exempt Employees are entitled to recover one (1) hour of premium pay for each day in
16 which a rest period violation occurred.

17 74. Despite the above-mentioned rest period violations, Defendant did not compensate
18 Plaintiff, and on information and belief, did not compensate the Aggrieved Non-Exempt
19 Employees one additional hour of pay at their regular rate as required by California law for each
20 day on which rest periods were not lawfully authorized and permitted.

21 75. As a direct and proximate result of Defendant's conduct as alleged above, Plaintiff and
22 the Aggrieved Non-Exempt Employees have sustained damages in the amount of one hour of
23 wages for each day they were not authorized and permitted to take lawful net ten (10) minute rest
24 periods.

25 **Failure To Pay Reporting Time Wages**

26 76. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum
27 wage as established by the Industrial Welfare Commission.

28 77. Labor Code section 1198 provides that the maximum hours of work and the standard

1 conditions of labor fixed by the commission shall be the maximum hours of work and the
2 standard conditions of labor for employees. The employment of any employee for longer hours
3 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

4 78. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001.

5 79. In relevant part, Section 5 of the applicable wage order provides:

6 (A) Each workday an employee is required to report for work and does report,
7 but is not put to work or is furnished less than half said employee's usual or
8 scheduled day's work, the employee shall be paid for half the usual or scheduled
9 day's work, but in no event for less than two (2) hours nor more than four (4)
hours, at the employee's regular rate of pay, which shall not be less than the
minimum wage.

10 80. Defendants failed to pay reporting time wages. In particular, Plaintiff and the Aggrieved
11 Non-Exempt employees were forced to report to work and were furnished with less than half the
12 employee's usual or scheduled day's work.

13 81. In fact, on numerous occasions, Plaintiff and Aggrieved Non-Exempt Employees
14 Aggrieved Non-Exempt Employees reported to work at Defendants' direction, and then were
15 sent home—all without any compensation.

16 82. By the failure to pay hourly wages for reporting time, Defendants willfully violated
17 Labor Code sections 1194, 1197, 1198, and IWC Wage Order 5-2001.

18 **Mandatory Tip Deductions**

19 83. Upon information and belief, Plaintiff alleges that Defendants failed to pay all
20 earned tips to Tipped Aggrieved Employees.

21 84. Upn information and belief, Plaintiff also alleges that Defendants also maintained
22 a mandatory tip pooling scheme which required the Tipped Aggrieved Employees to pay a
23 certain percentage of the total guest bill to Defendants, regardless of whether the guest actually
24 left a tip or gratuity for the employee. Thus, in some circumstances, the employee may "owe
25 money" to Defendants and have to pay such sums from other earned wages.

26 85. In relevant part Labor Code section 351 states, "No employer or agent shall
27 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
28 employee by a patron, or deduct any amount from wages due an employee on account of a

1 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against
 2 and as a part of the wages due the employee from the employer. Every gratuity is hereby
 3 declared to be the sole property of the employee or employees to whom it was paid, given, or left
 4 for."

5 86. There are only two conditions created by Labor Code section 351, "the person
 6 must be an employee and the tip must have been 'paid, given or left for' the employee." *Budrow*
 7 *v. Dave & Buster's of California, Inc.* (2009) 171 Cal.App.4th 875, 879.

8 87. In violation of Labor Code section 351, the Tipped Aggrieved Employees were
 9 required to contribute personal wages or otherwise earned wages to the tipping pool when the tip
 10 they received did not amount to the percentage they were required to contribute.

11 88. In addition, Plaintiff alleges upon information and belief that there was not a fair
 12 and reasonable distribution of tips from the pool.

13 **Unlawful Deductions**

14 89. Pursuant to Labor Code sections 221-224, it shall be unlawful for any employer to
 15 collect or receive from an employee any part of wages theretofore paid by said employer to said
 16 employee without written authorization.

17 90. As detailed above, Tipped Aggrieved Employees were required to give a
 18 percentage of their expected tips to the tip pool. However, if the Tipped Aggrieved Employees
 19 received less than expected or nothing at all, Defendants required Tipped Aggrieved Employees
 20 to contribute to the tip pool with their personal wages. This constitutes an unlawful deduction.

21 91. As detailed above, Defendants mandated that the Tipped Aggrieved Employees
 22 have wages deducted without written authorization in violation of Labor Code section 224 and
 23 300. Such deductions are unlawful in violation of Labor Code sections 224, 225.5 and 300.

24 92. As a result of the unlawful acts of Defendants, Tipped Aggrieved Employees have
 25 been deprived of wages in amounts to be determined at trial.

26 **Failure to Timely Pay Wages During Employment**

27 93. In addition, Plaintiff alleges that Defendants violated section 204 of the Labor
 28 Code, as Defendant willfully failed to pay on time to Plaintiff and the Aggrieved Non-Exempt

Employees the legal wages (including minimum wages, tipped wages, and overtime wages) they earned, and failed to pay one hour wages in lieu of required, but not lawfully provided, meal and rest periods, twice per calendar month as required by law.

Failure to Pay All Wages At the Time of Termination

94. In part as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code §§ 201-202.

95. Labor Code §203, at all times relevant herein, provided that if an employer willfully fails to pay any wages of an employee who is discharged or quits within the applicable time frame, the wages of such employee shall continue as from the due date thereof at the same rate until paid or until an action therefor is commenced, for not more than 30 days.

96. Plaintiff and the Aggrieved Non-Exempt Employees also did not receive waiting time penalties as required by Labor Code § 203.

97. All Aggrieved Non-Exempt Employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, tips, minimum wage, overtime compensation and compensation for non-provided meal and rest periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203.

Failure to Provide Accurate Compliant Wage Statements

98. This action is brought under Labor Code §226, which sets for reporting requirements for employers when paying wages, including,

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, . . . (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by

1 the employee.”

2 99. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
3 Wage Orders, Defendants did not and still do not furnish the Aggrieved Non-Exempt Employees
4 with an accurate itemized statement in writing accurately reflecting all of the required
5 information. Specifically, Defendants have also omitted accurate itemizations of total hours
6 worked, the name and address of the legal entity that is the employer, and gross and net pay from
7 Plaintiff and Aggrieved Non-Exempt Employees’ wage statements. In addition, Defendants have
8 failed to provide accurate itemized wage statements as a consequence of the above-specified
9 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
10 failure to pay meal and rest period premiums as required by law.

11 100. Defendants have failed to record many of the items delineated in applicable
12 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
13 1174, including by virtue of the fact that each wage statement which failed to accurately
14 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
15 meal and rest periods, or which failed to include compensation for all minimum wages earned or
16 overtime hours worked, was an inaccurate wage statement.

17 101. Plaintiff is informed and believes and based thereon alleges that Defendants
18 knowingly and intentionally failed to provide wage statements that complied with Labor Code
19 §226 to Plaintiff and the aggrieved employees by, inter alia, failing to show all hours worked and
20 all wages earned by Plaintiff and the aggrieved employees.

21 102. Defendants have made it difficult to account with precision for the unlawfully
22 withheld wages owed to Plaintiffs and Aggrieved Non-Exempt Employees during the liability
23 period and failed to implement and preserve a lawful record-keeping method to record all non-
24 provided meal and rest periods owed to employees, as required for non-exempt employees by
25 California Labor Code section 226 and applicable California Wage Orders.

26 **Failure to Keep Accurate Timekeeping Records**

27 103. IWC Wage Order 5-2001 requires in pertinent part: Every employer shall keep
28 accurate information with respect to each employee including the following: (3) Time records

1 showing when the employee begins and ends each work period. Meal periods, split shift
2 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
3 payroll period and applicable rates of pay....”

4 104. Labor Code section 1174 of the California also requires Defendants to maintain
5 and preserve, in a centralized location, among other items, records showing the names and
6 addresses of all employees employed and payroll records showing the hours worked daily by,
7 and the wages paid to, its employees. On information and belief and based thereon, Defendants
8 have knowingly and intentionally failed to comply with Labor Code section 1174, including by
9 implementing the policies and procedures and committing the violations alleged in the preceding
10 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
11 unlawful pursuant to Labor Code section 1175.

12 105. Defendants failed to keep accurate timekeeping records by failing to properly
13 record the beginning and end of each work period, and failing to accurately record meal periods
14 and the other items set forth herein.

15 **Failure to Reimburse Expenses**

16 106. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
17 Non-Exempt Employees for necessary expenditures incurred in direct consequence of the
18 discharge of his or her duties.

19 107. Plaintiff, and on information and belief members of the Aggrieved Non-Exempt
20 Employees, were required to incur expenses in the performance of their assigned job duties. For
21 example, Plaintiff and the Aggrieved Non-Exempt Employees were required to incur numerous
22 out of pocket expenses, including without limitation, for cellular phone usage, computer usage,
23 and for a phone application (including the Hot Schedules application), in direct consequence of
24 the discharge of their duties.

25 108. Upon information and belief, the Defendants did not reimburse Plaintiff or the
26 Aggrieved Non-Exempt Employees for such expenses. This constitutes a violation of Labor
27 Code section 2802.

28

1 **V. CAUSES OF ACTION**

2 **First Cause of Action**

3 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR**
4 **CODE SECTION 2698 ET SEQ.**

5 109. Plaintiff incorporates by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

7 110. On February 13, 2020, Plaintiff gave written notice by online submission to the
8 LWDA and by certified mail to Defendant of Defendants' violations of numerous provisions of
9 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
10 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached
11 hereto as **Exhibit A**.

12 111. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(a), as
13 she was employed by Defendants during the statutory period and suffered on or more of the
14 Labor Code violations set forth herein. She seeks to recover on behalf of herself and all other
15 current and former other aggrieved employees (hourly, non-exempt restaurant employees in
16 California) of Defendants the civil penalties provided by PAGA, plus reasonable attorney's fees
17 and costs.

18 112. 65 days have passed and no response has been received from the LWDA.
19 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

20 113. Plaintiff has exhausted all administrative procedures required of them under
21 Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing
22 forward this cause of action.

23 114. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
24 for which Defendants are liable due to numerous Labor Code violations as set forth in this
25 Complaint.

26 115. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
28 Cal.4th 969. Class certification of the PAGA claims is not required.

1 116. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover
2 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
3 violations as set forth in this Complaint.

4 117. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
5 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 6 a. Defendants' failure to comply with the requirement of Labor Code §1182.12, 1194,
7 1197, 1198, and Wage Order 5-2001 to pay at least minimum wage for every hour
8 worked;
- 9 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
10 1197, 1198, and Wage Order 5-2001 to pay all wages earned including overtime
11 wages;
- 12 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
13 wages after demand was made;
- 14 d. Defendants' failure to comply with the requirement of Labor Code §§204 and 210
15 to pay, without condition and within the time set by the applicable article, all
16 wages, or parts thereof;
- 17 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
18 wages due;
- 19 f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
20 to pay wages due to former employees;
- 21 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
22 waiting time penalties to former employees;
- 23 h. Defendants' failure to pay wages for reporting time in violation of Labor Code
24 sections 1194, 1197, 1198, and IWC Wage Order 5-2001;
- 25 i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
26 and IWC Wage Order 5-2001 to authorize and permit ten (10) minute rest breaks;

- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Order 5-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;
- l. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each lawful meal break that was not provided;
- m. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- n. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- o. Defendants' failure to comply with the requirements of Labor Code §221, 223, and 300 by making unlawful deductions from earned wages;
- p. Defendants' failure to comply with the requirements of Labor Code § 351 through its mandatory tip pooling policies;
- q. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- r. Defendants' failure to reimburse necessary expenses in violation of Labor Code § 2802.

118. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.

- b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.
- d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), Defendants are subject to a civil penalty of five hundred dollars (\$500).
- e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

119. Further, as a result of the acts alleged hereinabove, Plaintiff seek penalties under Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of the California Labor Code and IWC Wage Orders.

120. Under Labor Code §2699, Plaintiff and Aggrieved Non-Exempt Employees are

entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code.

121. Under Labor Code §2699, Plaintiff and Aggrieved Non-Exempt Employees should be awarded twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and costs.

122. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 204, 210, 226, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226, 218.5, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Respectfully submitted,

JAMES HAWKINS, APLC

Dated: June 25, 2021


James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for Plaintiff DESTINY HENDERSON-HUDGINS,
on behalf of herself and all others similarly situated

EXHIBIT A

JAMES *JH* HAWKINS
A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

April 20, 2021

Via LWDA Website:

Labor and Workforce Development Agency
PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

Bubba Gump Shrimp Co. Restaurants, Inc.
Agent for Service of Process: CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Cert Mail: 7012 2210 0001 9016 2208

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2699 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Destiny Henderson-Hudgins individually and on behalf of all others similarly situated, gives NOTICE of her intent to commence a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendant Bubba Gump Shrimp Co. Restaurants, Inc. via its agent for service of process.

Plaintiff hereby attaches her complaint, as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges Defendants have violated, including the facts and relevant theories upon which Plaintiff claims such violations.

All labor provisions in the Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Page 2
LWDA Notice

Plaintiff seeks to represent a group of aggrieved employees consisting of restaurant employees during the relevant period. Plaintiff also seeks to represent a sub-group of employees that received tips or were supposed to receive tips during their employment.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Christina M. Lucio', with a stylized flourish at the end.

Christina M. Lucio, Esq.

Enclosure: Complaint

James R. Hawkins (SBN 192925)
 Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
 9880 Research Drive, Suite 200
 Irvine, California 92618
 Telephone: (949) 387-7200
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 James@Jameshawkinsaplc.com
 Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff DESTINY HENDERSON-HUDGINS,
 on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF MONTEREY**

DESTINY HENDERSON-HUDGINS,
 individually and on behalf of herself and
 all others similarly situated,

Plaintiff,

v.

BUBBA GUMP SHRIMP CO.
 RESTAURANTS, INC., a Delaware
 Corporation; and DOES 1-50, inclusive,
 Defendants.

Case No.

PAGA REPRESENTATIVE ACTION

Assigned To:

Dept.:

COMPLAINT FOR:

- 1) Civil Penalties Under the Private
 Attorneys' General Act, Labor Code
 Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, DESTINY HENDERSON-HUDGINS, on behalf of herself and in her
2 representative capacity as private attorney general, complains of defendants BUBBA GUMP
3 SHRIMP CO. RESTAURANTS, INC., a Delaware Corporation, and DOES 1-50, inclusive
4 (collectively “Defendants”) as follows:

5 I. INTRODUCTION

6 1. This is a representative action for recovery of penalties under the Private Attorneys General
7 Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved
8 employees” to bring a lawsuit as a representative action on behalf of themselves and all other
9 current and former aggrieved employees, to recover civil penalties and address an employer’s
10 violations of the California Labor Code.

11 2. Plaintiff brings this action pursuant to the PAGA on a representative basis. All current and
12 former hourly, non-exempt employees in Defendants’ California restaurants are aggrieved
13 employees.

14 3. Plaintiff brings this suit on behalf of herself and all other current and former non-exempt
15 employees working for Defendants in their restaurants in California during the relevant time period
16 to recover civil penalties and address the employer’s violations of the California Labor Code (the
17 “Aggrieved Non-Exempt Employees”).

18 4. In addition, Plaintiff seeks to represent a subgroup of employees that received tips or were
19 supposed to receive tips during their employment (the “Tipped Aggrieved Employees”).

20 5. Plaintiff was employed by Defendants as an hourly, non-exempt restaurant employee in
21 the State of California.

22 6. In this case, Defendants violated various provisions of the California Labor Code and
23 relevant IWC Wage Orders. As set forth below, Defendants implemented policies and practices
24 which led to Defendants’ (1) failure to accurately calculate and pay all wages owed including
25 minimum wage, (2) failure to pay overtime; (3) failure to provide lawful meal periods, (4) failure
26 to provide compensation when lawful meal periods were not provided; (5) failure to authorize and
27 permit lawful rest periods; (6) failure to provide compensation when lawful rest periods were not
28 provided; (7) failure to pay reporting time wages; (8) unlawful deductions; (9) failure to timely

1 pay wages owed upon separation from employment; (10) failure to furnish accurate itemized wage
2 statements; (11) failure to reimburse necessary expenses; and (12) unlawful mandatory tip pooling.

3 7. Plaintiff in her representative capacity seeks civil penalties on behalf of herself and other
4 aggrieved employees pursuant to PAGA for Defendants failure to comply with California Labor
5 Code and IWC Wage Order requirements.

6 8. As set forth in greater detail herein, Defendants engaged in conduct and adopted policies
7 that were and continue to be in violation of the California Labor Code and applicable law.
8 Plaintiff, on behalf of herself and all other Aggrieved Non-Exempt Employees, brings this
9 PAGA action and seeks penalties for violations of the California Labor Code, including without
10 limitation sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.7, 351, 510, 512, 558, 1174,
11 1174.5, 1194, 1194.2, 1197, 1198, 2802, 2698 *et. seq.*, applicable IWC California Wage Orders
12 (including Wage Order 5-2001) and California Code of Regulations, Title 8, section 11000 *et*
13 *seq.*

14 9. This action is timely because Plaintiff suffered from a violation or numerous violations of
15 the California Labor Code within one year of the date on which a PAGA notice was sent to the
16 LWDA via online submission. More than 65 days have passed and no response has been
17 received by the LWDA. A copy of the letter sent to the LWDA with enclosure is attached hereto
18 as **Exhibit A**, thereby satisfying the notice requirement under the statute and permitting Plaintiff
19 to proceed with this action in a representative capacity.

20 II. JURISDICTION AND VENUE

21 10. The Superior Court of the State of California has jurisdiction in this matter because
22 Plaintiff is a citizen and resident of the State of California and Defendants are citizens and
23 residents of, and/or regularly conduct business in, California. Further, no federal question is at
24 issue because the claims are based solely on California law.

25 11. Venue is proper in this judicial district and the County of Monterey, California because
26 Defendants' maintain offices and facilities and transact business in the County of Monterey, and
27 Defendants' illegal policies and practices which are the subject of this action were applied, at
28 least in part, in the County of Monterey.

III. PARTIES

12. Upon information and belief, Defendant, Bubba Gump Shrimp Co. Restaurants, Inc., is a Delaware Corporation in good standing that is authorized to do business throughout the state of California. Bubba Gump Shrimp Co. Restaurants, Inc.'s headquarters are located at 1510 West Loop South, Houston, TX 77027.

13. Bubba Gump Shrimp Co. Restaurants, Inc. operates 40 restaurants worldwide, including 6 in California. Bubba Gump Shrimp Co. Restaurants, Inc. is a seafood restaurant chain.

14. Plaintiff Destiny Henderson-Hudgins, during the liability period, was a resident of Monterey County, California.

15. Plaintiff was employed by Defendants during the liability period as a Hostess in its restaurant on Cannery Row, Monterey, CA.

16. During her employment, Plaintiff earned an hourly wage and tips.

17. Plaintiff and the members of the aggrieved group were employed by Defendants as non-exempt employees, however titled, in Defendants' restaurants during the liability period in the state of California. (the "Aggrieved Non-Exempt Employees").

18. Plaintiff is an Aggrieved Non-Exempt Employee.

19. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendants.

20. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants and of each other; that

1 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly,
2 aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
3 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
4 of the liability of the Defendants as alleged herein.

5 22. Plaintiff is further informed and believes, and thereon alleges, that at all times material
6 herein, each Defendant was completely dominated and controlled by its co-Defendants and each
7 was the alter ego of the other. Whenever and wherever reference is made in this complaint to
8 any conduct by Defendant or Defendants, such allegations and references shall also be deemed to
9 mean the conduct of each of the Defendants, acting individually, jointly, and severally.

10 Whenever and wherever reference is made to individuals who are not named as Defendants in
11 this complaint, but were employees and/or agents of Defendants, such individuals, at all relevant
12 times acted on behalf of Defendants named in this complaint within the scope of their respective
13 employments.

14 IV. FACTUAL ALLEGATIONS

15 23. During the relevant time frame, Defendants compensated Plaintiff, and the Aggrieved
16 Non-Exempt Employees based upon an hourly wage.

17 24. During the relevant time frame, some Aggrieved Non-Exempt Employees also earned
18 tips, in addition to their hourly wages, during the performance of their job duties. Such
19 aggrieved employees are referred to as "Tipped Aggrieved Employees."

20 25. Plaintiff and the Aggrieved Non-Exempt Employees are and at all times pertinent hereto,
21 have been non-exempt employees within the meaning of the California Labor Code, and the
22 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
23 protections of the IWC Wage Orders and the Labor Code.

24 26. Plaintiff was employed as an hourly non-exempt restaurant employee from March 2019
25 through March 2020 when Covid-19 closures affected the restaurant at which the Plaintiff
26 worked. Plaintiff returned to work in October 2020 and worked until November 2020 when she
27 was terminated.

28 27. Plaintiff provided customer service and restaurant serving functions as a Hostess at

Defendants' restaurant location on Cannery Row in Monterey, California.

28. The Aggrieved Non-Exempt Employees worked as employees of Defendants throughout the state of California during the liability period.

29. Plaintiff typically worked 25-35 hours per week before the Covid-19 closures and 9-12 hours a week after the Covid-19 closures were lifted.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

Failure to Pay Minimum Wages

31. Labor Code § 1182.12 sets the minimum wage.

32. Labor Code § 1194 provides that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage compensation or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

33. Labor Code § 1197 states that "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

34. Labor Code § 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

35. The Labor Code and the Wage Order 5-2001 require that employers pay employees at least minimum wage for each hour worked.

36. Plaintiff and the Aggrieved Non-Exempt Employees were not exempt from the requirement to be paid minimum wages in accordance with the law.

37. Plaintiff alleges that Defendants violated Labor Code sections 1194, 1197, 1198 and the IWC Wage Order 5-2001 by failing to pay all wages owed including minimum wages to

1 Aggrieved Non-Exempt Employees.

2 38. Plaintiff alleges that, during the relevant time, Plaintiff and the Aggrieved Non-Exempt
3 Employees were required to work hours for which they were not compensated at least minimum
4 wage in violation of the law by virtue of Defendants' policies, practices, procedures, labor
5 models, staffing models, and labor budgets.

6 39. In addition, upon information and belief, Defendants often manipulated or changed the
7 time punch data for Plaintiff and the Aggrieved Non-Exempt Employees to make it appear as if
8 compliant meal periods had been taken. Such time during purportedly provided meal periods
9 constitutes hours worked for which Plaintiff and the Aggrieved Non-Exempt Employees should
10 have been paid.

11 40. Defendants knew or should have known that Plaintiff and the Aggrieved Non-Exempt
12 Employees were required to work off-the clock but did not pay Aggrieved Non-Exempt
13 Employees for such hours worked.

14 41. As a result of Defendants' conduct in not paying Plaintiff and the Aggrieved Non-
15 Exempt Employees all wages earned, the Plaintiff and the Aggrieved Non-Exempt Employees
16 have been deprived of minimum wages for off the clock hours for which they were not
17 compensated.

18 **Failure to Pay Overtime**

19 42. The Labor Code and the Wage Order 5-2001 require that employers pay employees at
20 least minimum wage for every hour worked, and overtime for hours worked over eight hours in a
21 day and over forty hours in a week.

22 43. Labor Code §510, 515 requires employers to pay employees one-and-one-half (1-1/2)
23 times the employee's regular rate of pay for all those hours worked in excess of forty (40) hours
24 in one work week and/or in excess of eight (8) hours in one work day, and two (2) times the
25 regular rate of pay for hours worked in excess of twelve (12) hours in a day or more than eight
26 (8) hours on the seventh day in a workweek, unless such employees are exempt from the
27 requirements of the Wage Order.

28 44. Plaintiff, and the Aggrieved Non-Exempt Employees were not exempt from the

1 requirement to be paid overtime wages in accordance with the law.

2 45. Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1197, 1198 and
3 the IWC Wage Order by failing to pay all wages owed including overtime to Aggrieved Non-
4 Exempt Employees.

5 46. Plaintiff alleges that during the relevant time, Plaintiff and the Aggrieved Non-Exempt
6 Employees were required to work hours for which they were not compensated, including
7 overtime, in violation of the law by virtue of Defendants' policies, practices, procedures, labor
8 models, staffing models, and labor budgets.

9 47. At all times relevant, Plaintiff and the Aggrieved Non-Exempt Employees consistently
10 worked hours for which they were not paid because Plaintiff and the Aggrieved Non-Exempt
11 Employees were required to work off the clock, including without limitation during purportedly
12 provided meal periods.

13 48. Upon information and belief, Defendants systematically deducted hours worked from
14 each workday over five hours for purported meal periods even when duty-free time was not in
15 fact provided.

16 49. Plaintiff is informed and believes that Defendants and its managers were aware that
17 Plaintiff and the Aggrieved Non-Exempt Employees were working off the clock and that they
18 should have been paid for this time.

19 50. In addition, upon information and belief, Defendants failed to pay Aggrieved Non-
20 Exempt Employees for overtime hours worked at the proper rate, because Defendants failed to
21 include all applicable forms of compensation in the regular rate.

22 51. As a result of Defendants' conduct in requiring Plaintiff and the Aggrieved Non-Exempt
23 Employees to work hours in excess of eight (8) hours per work day and/or forty (40) in one work
24 week without paying them one-and-one-half (1-1/2) times their regular hour rate (or double-time
25 hours for hours worked in excess of twelve (12) hours per day or for hours over eight on the
26 seventh day), Defendants violated the Labor Code and the Wage Order.

27 **Failure to Provide Timely, Legally Compliant Meal Periods**

28 52. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period

1 of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in
2 which the employee is relieved of all of his or her duties, except that when a work period of not
3 more than six (6) hours will complete the day's work the meal period may be waived by mutual
4 consent of the employer and employee.

5 53. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a
6 work period of more than ten (10) hours without providing a second meal break of not less than
7 thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
8 break may only be waived by mutual consent, and if the employee did not waive his or her first
9 meal period, and the employee's work day will not exceed twelve hours.

10 54. During the liability period, Defendant failed to provide Plaintiff and Aggrieved Non-
11 Exempt Employees with timely and uninterrupted first meal periods of not less than thirty (30)
12 minutes within the first five hours of a shift.

13 55. During the liability period, Defendant also failed to provide Plaintiff and the Aggrieved
14 Non-Exempt Employees with timely and uninterrupted second meal periods of not less than
15 thirty (30) minutes on shifts longer than ten hours.

16 56. Indeed, during the relevant time, as a consequence of Defendant's staffing and
17 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
18 Plaintiff and the Aggrieved Non-Exempt Employees were not provided with legally required
19 uninterrupted meal periods.

20 57. Upon information and belief, Defendants often manipulated or changed the time
21 punch data for Plaintiff and the Aggrieved Non-Exempt Employees to make it appear as if
22 compliant meal periods had been taken.

23 58. In addition, Defendants put the onus on employees to provide their own meal
24 breaks and authorize and permit their own rest periods by failing to provide or authorize and
25 permit such breaks in the first instance.

26 59. Upon information and belief, Defendants also maintained a policy which provides
27 that if an employee fails to inform a supervisor of a non-compliant meal or rest period, he or she
28 voluntarily waives that meal or rest break.

1 60. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded
2 or discouraged the taking of lawful meal and rest breaks through its practices, policies, and
3 procedures.

4 61. On information and belief, Plaintiff and Aggrieved Non-Exempt Employees did
5 not waive their rights to meal periods under the law.

6 62. Defendants violated Labor Code § 226.7, 512 and IWC Wage Order 5-2001 by
7 such conduct.

8 63. Pursuant to Labor Code § 226.7, Plaintiff and the Aggrieved Non-Exempt
9 Employees are entitled to recover one (1) hour of premium pay for each day in which a meal
10 period violation occurred.

11 64. Plaintiff and the Aggrieved Non-Exempt Employees were not paid one hour of pay at
12 their regular rate for each day that a first or second meal period was not lawfully provided. This
13 is a further violation of Labor Code § 226.7, 512 and IWC Wage Order 5-2001.

14 **Failure to Authorize and Permit Legally Compliant Rest Breaks**

15 65. This action is brought under Labor Code §226.7 and Section 12(A) of Wage Order 5,
16 which provides that employers shall authorize and permit employees to take a rest period of ten
17 (10) minutes for each four (4) hours, or major fraction thereof, worked.

18 66. This action is further brought under Labor Code §226.7(b) and Section 12(B) of Wage
19 Order 5, which provides that if an employer fails to authorize and permit a lawful rest period, the
20 employer shall pay the employee one hour of pay for each work day that a rest period was not
21 authorized and permitted.

22 67. Plaintiff and the Aggrieved Non-Exempt Employees were systematically not authorized
23 and permitted to take legally compliant net ten (10) minute rest periods for every four hours
24 worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198,
25 and IWC Wage Order 5.

26 68. Employees were not authorized and permitted to take a net ten minute rest period as
27 required by law, in part because Defendants maintained and enforced scheduling and staffing
28 practices, policies and practices, and imposed work demands that frequently required employees

1 to forego their breaks or return before a net ten minutes of rest.

2 69. As set forth above, Defendants put the onus on employees to provide their own meal
3 breaks and authorize and permit rest periods by failing to provide or authorize and permit such
4 breaks in the first instance.

5 70. Defendants also maintained a policy which provides that if an employee fails to inform a
6 supervisor of a non-compliant meal or rest period, he or she voluntarily waives that meal or rest
7 break.

8 71. In addition, upon information and belief, Defendant's policy provided that employees
9 could not leave the premises during rest periods. This exercise of employer control over
10 employees during rest breaks is inconsistent with the mandates of the law.

11 72. Moreover, upon information and belief, Plaintiff alleges that Defendants impeded or
12 discouraged the taking of lawful meal and rest breaks through its practices, policies, and
13 procedures.

14 73. Pursuant to Labor Code § 226.7, 1198, and the Wage Order, Plaintiff and the Aggrieved
15 Non-Exempt Employees are entitled to recover one (1) hour of premium pay for each day in
16 which a rest period violation occurred.

17 74. Despite the above-mentioned rest period violations, Defendant did not compensate
18 Plaintiff, and on information and belief, did not compensate the Aggrieved Non-Exempt
19 Employees one additional hour of pay at their regular rate as required by California law for each
20 day on which rest periods were not lawfully authorized and permitted.

21 75. As a direct and proximate result of Defendant's conduct as alleged above, Plaintiff and
22 the Aggrieved Non-Exempt Employees have sustained damages in the amount of one hour of
23 wages for each day they were not authorized and permitted to take lawful net ten (10) minute rest
24 periods.

25 **Failure To Pay Reporting Time Wages**

26 76. Labor Code section 1197 makes it unlawful to pay an employee less than the minimum
27 wage as established by the Industrial Welfare Commission.

28 77. Labor Code section 1198 provides that the maximum hours of work and the standard

1 conditions of labor fixed by the commission shall be the maximum hours of work and the
2 standard conditions of labor for employees. The employment of any employee for longer hours
3 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

4 78. The applicable reporting time wages are fixed by the IWC in Wage Order 5-2001.

5 79. In relevant part, Section 5 of the applicable wage order provides:

6 (A) Each workday an employee is required to report for work and does report,
7 but is not put to work or is furnished less than half said employee's usual or
8 scheduled day's work, the employee shall be paid for half the usual or scheduled
9 day's work, but in no event for less than two (2) hours nor more than four (4)
hours, at the employee's regular rate of pay, which shall not be less than the
minimum wage.

10 80. Defendants failed to pay reporting time wages. In particular, Plaintiff and the Aggrieved
11 Non-Exempt employees were forced to report to work and were furnished with less than half the
12 employee's usual or scheduled day's work.

13 81. In fact, on numerous occasions, Plaintiff and Aggrieved Non-Exempt Employees
14 Aggrieved Non-Exempt Employees reported to work at Defendants' direction, and then were
15 sent home—all without any compensation.

16 82. By the failure to pay hourly wages for reporting time, Defendants willfully violated
17 Labor Code sections 1194, 1197, 1198, and IWC Wage Order 5-2001.

18 **Mandatory Tip Deductions**

19 83. Upon information and belief, Plaintiff alleges that Defendants failed to pay all
20 earned tips to Tipped Aggrieved Employees.

21 84. Upn information and belief, Plaintiff also alleges that Defendants also maintained
22 a mandatory tip pooling scheme which required the Tipped Aggrieved Employees to pay a
23 certain percentage of the total guest bill to Defendants, regardless of whether the guest actually
24 left a tip or gratuity for the employee. Thus, in some circumstances, the employee may "owe
25 money" to Defendants and have to pay such sums from other earned wages.

26 85. In relevant part Labor Code section 351 states, "No employer or agent shall
27 collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an
28 employee by a patron, or deduct any amount from wages due an employee on account of a

1 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against
2 and as a part of the wages due the employee from the employer. Every gratuity is hereby
3 declared to be the sole property of the employee or employees to whom it was paid, given, or left
4 for."

5 86. There are only two conditions created by Labor Code section 351, "the person
6 must be an employee and the tip must have been 'paid, given or left for' the employee." *Budrow*
7 *v. Dave & Buster's of California, Inc.* (2009) 171 Cal.App.4th 875, 879.

8 87. In violation of Labor Code section 351, the Tipped Aggrieved Employees were
9 required to contribute personal wages or otherwise earned wages to the tipping pool when the tip
10 they received did not amount to the percentage they were required to contribute.

11 88. In addition, Plaintiff alleges upon information and belief that there was not a fair
12 and reasonable distribution of tips from the pool.

13 **Unlawful Deductions**

14 89. Pursuant to Labor Code sections 221-224, it shall be unlawful for any employer to
15 collect or receive from an employee any part of wages theretofore paid by said employer to said
16 employee without written authorization.

17 90. As detailed above, Tipped Aggrieved Employees were required to give a
18 percentage of their expected tips to the tip pool. However, if the Tipped Aggrieved Employees
19 received less than expected or nothing at all, Defendants required Tipped Aggrieved Employees
20 to contribute to the tip pool with their personal wages. This constitutes an unlawful deduction.

21 91. As detailed above, Defendants mandated that the Tipped Aggrieved Employees
22 have wages deducted without written authorization in violation of Labor Code section 224 and
23 300. Such deductions are unlawful in violation of Labor Code sections 224, 225.5 and 300.

24 92. As a result of the unlawful acts of Defendants, Tipped Aggrieved Employees have
25 been deprived of wages in amounts to be determined at trial.

26 **Failure to Timely Pay Wages During Employment**

27 93. In addition, Plaintiff alleges that Defendants violated section 204 of the Labor
28 Code, as Defendant willfully failed to pay on time to Plaintiff and the Aggrieved Non-Exempt

Employees the legal wages (including minimum wages, tipped wages, and overtime wages) they earned, and failed to pay one hour wages in lieu of required, but not lawfully provided, meal and rest periods, twice per calendar month as required by law.

Failure to Pay All Wages At the Time of Termination

94. In part as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code §§ 201-202.

95. Labor Code §203, at all times relevant herein, provided that if an employer willfully fails to pay any wages of an employee who is discharged or quits within the applicable time frame, the wages of such employee shall continue as from the due date thereof at the same rate until paid or until an action therefor is commenced, for not more than 30 days.

96. Plaintiff and the Aggrieved Non-Exempt Employees also did not receive waiting time penalties as required by Labor Code § 203.

97. All Aggrieved Non-Exempt Employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, tips, minimum wage, overtime compensation and compensation for non-provided meal and rest periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203.

Failure to Provide Accurate Compliant Wage Statements

98. This action is brought under Labor Code §226, which sets for reporting requirements for employers when paying wages, including,

“Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees . . . an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, . . . (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by

1 the employee.”

2 99. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
3 Wage Orders, Defendants did not and still do not furnish the Aggrieved Non-Exempt Employees
4 with an accurate itemized statement in writing accurately reflecting all of the required
5 information. Specifically, Defendants have also omitted accurate itemizations of total hours
6 worked, the name and address of the legal entity that is the employer, and gross and net pay from
7 Plaintiff and Aggrieved Non-Exempt Employees’ wage statements. In addition, Defendants have
8 failed to provide accurate itemized wage statements as a consequence of the above-specified
9 violations for failure to accurately pay all wages owed, accurately record all hours worked, and
10 failure to pay meal and rest period premiums as required by law.

11 100. Defendants have failed to record many of the items delineated in applicable
12 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
13 1174, including by virtue of the fact that each wage statement which failed to accurately
14 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
15 meal and rest periods, or which failed to include compensation for all minimum wages earned or
16 overtime hours worked, was an inaccurate wage statement.

17 101. Plaintiff is informed and believes and based thereon alleges that Defendants
18 knowingly and intentionally failed to provide wage statements that complied with Labor Code
19 §226 to Plaintiff and the aggrieved employees by, inter alia, failing to show all hours worked and
20 all wages earned by Plaintiff and the aggrieved employees.

21 102. Defendants have made it difficult to account with precision for the unlawfully
22 withheld wages owed to Plaintiffs and Aggrieved Non-Exempt Employees during the liability
23 period and failed to implement and preserve a lawful record-keeping method to record all non-
24 provided meal and rest periods owed to employees, as required for non-exempt employees by
25 California Labor Code section 226 and applicable California Wage Orders.

26 **Failure to Keep Accurate Timekeeping Records**

27 103. IWC Wage Order 5-2001 requires in pertinent part: Every employer shall keep
28 accurate information with respect to each employee including the following: (3) Time records

1 showing when the employee begins and ends each work period. Meal periods, split shift
2 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
3 payroll period and applicable rates of pay....”

4 104. Labor Code section 1174 of the California also requires Defendants to maintain
5 and preserve, in a centralized location, among other items, records showing the names and
6 addresses of all employees employed and payroll records showing the hours worked daily by,
7 and the wages paid to, its employees. On information and belief and based thereon, Defendants
8 have knowingly and intentionally failed to comply with Labor Code section 1174, including by
9 implementing the policies and procedures and committing the violations alleged in the preceding
10 causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is
11 unlawful pursuant to Labor Code section 1175.

12 105. Defendants failed to keep accurate timekeeping records by failing to properly
13 record the beginning and end of each work period, and failing to accurately record meal periods
14 and the other items set forth herein.

15 **Failure to Reimburse Expenses**

16 106. Labor Code § 2802 requires Defendants to indemnify Plaintiff and Aggrieved
17 Non-Exempt Employees for necessary expenditures incurred in direct consequence of the
18 discharge of his or her duties.

19 107. Plaintiff, and on information and belief members of the Aggrieved Non-Exempt
20 Employees, were required to incur expenses in the performance of their assigned job duties. For
21 example, Plaintiff and the Aggrieved Non-Exempt Employees were required to incur numerous
22 out of pocket expenses, including without limitation, for cellular phone usage, computer usage,
23 and for a phone application (including the Hot Schedules application), in direct consequence of
24 the discharge of their duties.

25 108. Upon information and belief, the Defendants did not reimburse Plaintiff or the
26 Aggrieved Non-Exempt Employees for such expenses. This constitutes a violation of Labor
27 Code section 2802.

28

1 **V. CAUSES OF ACTION**

2 **First Cause of Action**

3 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT, LABOR**
4 **CODE SECTION 2698 ET SEQ.**

5 109. Plaintiff incorporates by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

7 110. On February 13, 2020, Plaintiff gave written notice by online submission to the
8 LWDA and by certified mail to Defendant of Defendants' violations of numerous provisions of
9 the California Labor Code and the IWC Wage Orders as alleged in this complaint. All fees were
10 paid as required by statute. A copy of the letter sent to the LWDA with enclosure is attached
11 hereto as **Exhibit A**.

12 111. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(a), as
13 she was employed by Defendants during the statutory period and suffered on or more of the
14 Labor Code violations set forth herein. She seeks to recover on behalf of herself and all other
15 current and former other aggrieved employees (hourly, non-exempt restaurant employees in
16 California) of Defendants the civil penalties provided by PAGA, plus reasonable attorney's fees
17 and costs.

18 112. 65 days have passed and no response has been received from the LWDA.
19 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

20 113. Plaintiff has exhausted all administrative procedures required of them under
21 Labor Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing
22 forward this cause of action.

23 114. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
24 for which Defendants are liable due to numerous Labor Code violations as set forth in this
25 Complaint.

26 115. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
28 Cal.4th 969. Class certification of the PAGA claims is not required.

1 116. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover
2 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
3 violations as set forth in this Complaint.

4 117. Specifically, Plaintiff, on behalf of herself and the Aggrieved Employees, seek
5 penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- 6 a. Defendants' failure to comply with the requirement of Labor Code §1182.12, 1194,
7 1197, 1198, and Wage Order 5-2001 to pay at least minimum wage for every hour
8 worked;
- 9 b. Defendants' failure to comply with the requirement of Labor Code §510, 1194,
10 1197, 1198, and Wage Order 5-2001 to pay all wages earned including overtime
11 wages;
- 12 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
13 wages after demand was made;
- 14 d. Defendants' failure to comply with the requirement of Labor Code §§204 and 210
15 to pay, without condition and within the time set by the applicable article, all
16 wages, or parts thereof;
- 17 e. Defendants' failure to comply with the requirement of Labor Code §225.5 to pay
18 wages due;
- 19 f. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
20 to pay wages due to former employees;
- 21 g. Defendants' failure to comply with the requirement of Labor Code §203 to pay
22 waiting time penalties to former employees;
- 23 h. Defendants' failure to pay wages for reporting time in violation of Labor Code
24 sections 1194, 1197, 1198, and IWC Wage Order 5-2001;
- 25 i. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198,
26 and IWC Wage Order 5-2001 to authorize and permit ten (10) minute rest breaks;

- j. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each statutorily required rest break that was not authorized and permitted;
- k. Defendants' failure to comply with the requirement of Labor Code §226.7, 512, 1198, and IWC Wage Order 5-2001 to provide timely, uninterrupted 30 minute off-duty meal periods;
- l. Defendants' failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Order 5-2001 to pay one hour of premium pay for each lawful meal break that was not provided;
- m. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- n. Defendants' failure to provide accurate compliant wage statements under Labor Code section 226;
- o. Defendants' failure to comply with the requirements of Labor Code §221, 223, and 300 by making unlawful deductions from earned wages;
- p. Defendants' failure to comply with the requirements of Labor Code § 351 through its mandatory tip pooling policies;
- q. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and Wage Order 5-2001;
- r. Defendants' failure to reimburse necessary expenses in violation of Labor Code § 2802.

118. Plaintiff seeks civil penalties for Defendants' violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code § 210, for violations of Labor Code § 204, Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.

- b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a), Defendants are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.
- c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.
- d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d), Defendants are subject to a civil penalty of five hundred dollars (\$500).
- e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

119. Further, as a result of the acts alleged hereinabove, Plaintiff seek penalties under Labor Code §§2698 et seq. and 2699 because of Defendants’ violation of numerous provisions of the California Labor Code and IWC Wage Orders.

120. Under Labor Code §2699, Plaintiff and Aggrieved Non-Exempt Employees are

entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code.

121. Under Labor Code §2699, Plaintiff and Aggrieved Non-Exempt Employees should be awarded twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and costs.

122. Under Labor Code §2699, the State of California should be awarded seventy-five percent (75%) of the penalties due under California law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 204, 210, 226, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226, 218.5, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

Respectfully submitted,

JAMES HAWKINS, APLC

Dated: April 20, 2021


James R. Hawkins, Esq.
Christina M. Lucio, Esq.

Attorneys for Plaintiff DESTINY HENDERSON-HUDGINS,
on behalf of herself and all others similarly situated