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and on behalf of all others similarly situated.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

08/09/2021 at 01:27:00 PM

Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

GUADALUPE ANTONIO SANCHEZ,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

BWW RESOURCES, LLC; INSPIRE
BRANDS, INC.; ARBY'S RESTAURANT
GROUP, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 37-2021-00024806-CU-OE-CTL

*Assigned for All Purposes to:
Hon. John S. Meyer; Dept. C-64*

**[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Unlawful Retention of Gratuities;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Violation of Business and Professions Code §§ 17200, *et seq.*
8. Enforcement of Labor Code § 2698 *et seq.*

1 Plaintiff Guadalupe Antonio Sanchez, individually, and on behalf of others similarly
2 situated, alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Guadalupe Antonio Sanchez (“Plaintiff”) brings this putative and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. §
6 2698 et seq., action against defendants BWW Resources, LLC; Inspire Brands, Inc.; and Arby’s
7 Restaurant Group, Inc., and DOES 1 through 20, inclusive (collectively, “Defendants”), on
8 behalf of Defendants’ non-exempt employees throughout California.

9 2. Defendants are in the food service industry.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) failing to pay all wages (including reporting time wages);
- 17 (b) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (c) failing to authorize or permit lawful rest breaks or provide compensation
19 in lieu thereof;
- 20 (d) failing to permit Plaintiffs and class members to retain all gratuities.
- 21 (e) failing to provide accurate itemized wage statements;
- 22 (f) failing to pay all wages due upon separation of employment.

23 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
24 others similarly situated in California to recover, among other things, unpaid wages and
25 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
26 201, 202, 203, 204, 210, 226, 226.3, 226.7, 351, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
27 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, and Code of California Civil Procedure § 1021.5.

1 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
2 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
3 at all relevant times.

4 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
8 the employer and/or joint employer of Plaintiff and the class members.

9 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
10 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
11 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
12 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
13 the official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of
15 such agency or employment, or ratified each and every act or omission complained of herein.
16 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
17 each and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 **CLASS ACTION ALLEGATIONS**

22 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
23 himself and all others similarly situated who were affected by Defendants' Labor Code,
24 Business and Professions Code §§ 17200, and IWC Wage Order violations.

25 19. All claims alleged herein arise under California law for which Plaintiff seeks
26 relief authorized by California law.

27 20. Plaintiff's proposed class consists of and is defined as follows:
28

1 Class

2 All California citizens currently or formerly employed by Defendants as non-
3 exempt employees in the State of California at any time between December 8,
4 2016¹ and the date of class certification (“Class”).

5 21. Plaintiff also seeks to certify the following subclass of employees:

6 Waiting Time Subclass

7 All Class Members who separated their employment with Defendants at any time
8 between December 8, 2017 and the date the class is certified (“Subclass” or
9 “Waiting Time Subclass”).

10 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
11 subclasses, or modify or re-define any class or subclass definition as appropriate based on
12 investigation, discovery, and specific theories of liability.

13 23. Members of the Class and the Subclass described above will be collectively
14 referred to as “Class Members.”

15 24. There are common questions of law and fact as to the Class Members that
16 predominate over any questions affecting only individual members including, but not limited to,
17 the following:

18 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
19 (including reporting time wages) for all hours worked by Plaintiff and
20 Class Members.

21 (b) Whether Defendants deprived Plaintiff and Class Members of timely
22 meal periods or required Plaintiff and Class Members to work through
23 meal periods without proper compensation.

24 (c) Whether Defendants deprived Plaintiff and Class Members of rest breaks
25 or required Plaintiff and Class Members to work through rest breaks
26 without proper compensation.

27 ¹ The statute of limitations for this matter was tolled between April 6, 2020 and October 1, 2020
28 pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- 1 (d) Whether Defendants failed to pay Plaintiff and Class Members all
2 gratuities.
- 3 (e) Whether Defendants failed to provide Plaintiff and Class Members
4 accurate itemized wage statements.
- 5 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all
6 wages due upon termination or within seventy-two (72) hours of
7 resignation.
- 8 (g) Whether Defendants' conduct was willful or reckless.
- 9 (h) Whether Defendants engaged in unfair business practices in violation of
10 Business and Professions Code §§ 17200, *et seq.*

11 25. There is a well-defined community of interest in this litigation and the proposed
12 Class and Subclass are readily ascertainable:

13 (a) Numerosity: The Class Members are so numerous that joinder of all
14 members is impractical. Although the members of the entire Class and Subclass are unknown
15 to Plaintiff at this time, on information and belief, the class is estimated to be greater than
16 twenty-five (25) individuals. The identities of the Class Members are readily ascertainable by
17 inspection of Defendants' employment and payroll records.

18 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
19 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
20 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
21 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
22 sustained by the Class Members because they arise out of and are caused by Defendants'
23 common course of conduct as alleged herein.

24 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
25 interests of all Class Members because it is in his best interest to prosecute the claims alleged
26 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's
27 attorneys, as proposed class counsel, are competent and experienced in litigating large
28 employment class actions and versed in the rules governing class action discovery,

1 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
2 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
3 for the prosecution of this action for the substantial benefit of the Class Members.

4 (d) Superiority: The nature of this action makes use of class action
5 adjudication superior to other methods. A class action will achieve economies of time, effort,
6 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
7 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
8 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
9 manage this case as a class action.

10 (e) Public Policy Considerations: Employers in the State of California
11 violate employment and labor laws every day. Current employees are often afraid to assert their
12 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
13 actions because they believe their former employers might damage their future endeavors
14 through negative references and/or other means. Class actions provide class members who are
15 not named in the complaint with a type of anonymity that allows for the vindication of their
16 rights while affording them privacy protections.

17 **GENERAL ALLEGATIONS**

18 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 California residents as non-exempt employees at Defendants' California business location(s).

20 27. Defendant employed Plaintiff as a non-exempt employee at Defendants'
21 California business location.

22 28. Defendants continue to employ non-exempt employees within California.

23 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
25 who were knowledgeable about California's wage and hour laws, employment and personnel
26 practices, and the requirements of California law.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and Class Members were entitled to receive wages for all time

1 worked and that they were not receiving all wages earned for work that was required to be
2 performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members
3 were not paid all wages for all hours worked at the correct rate, such as failing to pay reporting
4 time pay.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Class Members were entitled to receive all required meal
7 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
8 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
9 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
10 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
11 rate of pay when they did not receive a timely, uninterrupted meal period.

12 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
14 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
15 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
16 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
17 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

18 33. Plaintiff is informed and believes, and thereon allege, that Defendants knew or
19 should have known that Plaintiff and Class Members were entitled to all gratuities paid, given
20 to, or left for them by a patron. In violation of the California Labor Code, Defendants failed to
21 permit Plaintiff and Class Members to retain all gratuities paid to them by customers.

22 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Class Members were entitled to receive itemized wage
24 statements that accurately showed the following information pursuant to the Labor Code: (1)
25 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
27 deductions, provided that all deductions made on written orders of the employee may be
28 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period

1 for which the employee is paid; (7) the name of the employee and only the last four digits of his
2 or her social security number or an employee identification number other than a social security
3 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at
5 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
6 were not provided with accurate itemized wage statements.

7 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that the Waiting Time Subclass was entitled to timely payment of wages
9 due upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass
10 did not receive payment of all wages within permissible time periods.

11 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known they had a duty to compensate Plaintiff and Class Members, and
13 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
14 intentionally failed to do so in order to increase Defendants' profits.

15 37. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
16 against Defendants on behalf of himself and all Class Members to recover, among other things,
17 unpaid wages, unpaid meal period premium payments, unpaid rest period premium payments,
18 interest, attorneys' fees, penalties, costs, and expenses.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES**

21 (Violation of Labor Code §§ 1194, 1194.2, and 1197; Violation of IWC Wage Order)

22 38. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
25 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
26 wage than the minimum so fixed is unlawful.

27 40. During the relevant time period, Defendants paid Plaintiff and Class Members
28 less than minimum wages when they failed to pay proper compensation for all hours worked,

1 including reporting time. Plaintiff and Class Members were not being paid at least the lawful
2 minimum wage for their work.

3 41. During the relevant time period, Defendants regularly failed to pay at least
4 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code
5 §§ 1194 and 1197.

6 42. Defendants' failure to pay Plaintiff and Class Members the required minimum
7 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
8 Members are entitled to recover the unpaid balance of their minimum wage compensation as
9 well as interest, costs, and attorneys' fees.

10 43. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
11 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
12 interest thereon.

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order)

16 44. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
17 though fully set forth herein

18 45. Labor Code § 226.7 provides that no employer shall require an employee to work
19 during any meal period mandated by the IWC Wage Orders.

20 46. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
21 employ any person for a work period of more than five (5) hours without a meal period of not
22 less than 30 minutes, except that when a work period of not more than six (6) hours will
23 complete the day's work the meal period may be waived by mutual consent of the employer and
24 the employee."

25 47. Labor Code § 512(a) provides that an employer may not require, cause, or permit
26 an employee to work for a period of more than five (5) hours per day without providing the
27 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
28

1 the total work period per day of the employee is not more than six (6) hours, the meal period
2 may be waived by mutual consent of both the employer and the employee.

3 48. Labor Code § 512(a) also provides that an employer may not employ an
4 employee for a work period of more than ten (10) hours per day without providing the employee
5 with a second meal period of not less than thirty (30) minutes, except that if the total hours
6 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
7 consent of the employer and the employee only if the first meal period was not waived.

8 49. During the relevant time period, Plaintiff and Class Members did not receive
9 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
10 their meal periods were missed, late, short, interrupted, and/or they were not permitted to take a
11 second meal period.

12 50. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order
13 requires an employer to pay an employee one (1) additional hour of pay at the employee's
14 regular rate of compensation for each work day that a compliant meal period is not provided.

15 51. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
16 period premiums for missed, late, short, and/or interrupted meal periods pursuant to Labor Code
17 § 226.7(b) and section 11 of the applicable IWC Wage Order.

18 52. As a result of Defendants' failure to pay Plaintiff and Class Members an
19 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
20 Class Members suffered and continue to suffer a loss of wages and compensation.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PERMIT REST BREAKS**

23 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order)

24 53. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 54. Labor Code § 226.7(a) provides that no employer shall require an employee to
27 work during any rest period mandated by the IWC Wage Orders.
28

1 55. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
2 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
3 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
4 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
5 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

6 56. During the relevant time period, Plaintiff and Class Members did not receive a
7 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
8 they were required to work through their daily rest periods, were not permitted to take timely
9 rest periods, and/or were not authorized to take their rest periods.

10 57. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
11 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
12 regular rate of compensation for each work day that a compliant rest period is not provided.

13 58. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
14 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
15 226.7(b) and section 12 of the applicable IWC Wage Order.

16 59. As a result of Defendants’ failure to pay Plaintiff and Class Members an
17 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
18 Members suffered and continue to suffer a loss of wages and compensation.

19 **FOURTH CAUSE OF ACTION**

20 **UNLAWFUL RETENTION OF GRATUITIES**

21 (Violation of Labor Code § 351)

22 60. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
23 though fully set forth herein.

24 61. California Labor Code § 351 provides that no employer shall collect, take, or
25 receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron,
26 or deduct any amount from wages due to an employee on account of a gratuity, or require an
27 employee to credit the amount, or any part thereof, of a gratuity against and as a part of the
28 wages due the employee from the employer.

62. During the relevant time period, Defendants had a policy and practice of improperly retaining all or part of gratuities left by patrons for Plaintiff and class members.

63. As a result of Defendants' practice of improperly retaining Plaintiff's and class members' gratuities, Plaintiff and class members suffered and continue to suffer a loss of wages, the exact amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226; Violation of IWC Wage Order)

64. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

65. Labor Code § 226(a) requires Defendants to provide each employee with an accurate wage statement in writing showing nine pieces of information, including, the following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (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 the employee.

66. During the relevant time period, Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff and Class Members. Defendants provided Plaintiff and Class Members with wage statements that were missing or inaccurately stated one or more of the following items: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,

1 provided that all deductions made on written orders of the employee may be aggregated and
2 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
3 employee is paid, (7) the name of the employee and the last four digits of his or her social
4 security number or an employee identification number other than a social security number, (8)
5 the name and address of the legal entity that is the employer, and/or (9) all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee.

8 67. As a result of Defendants' knowing and intentional failure to comply with Labor
9 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
10 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
11 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
12 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
13 their protected interest in receiving, accurate itemized wage statements under Labor Code
14 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage
15 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
16 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
17 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
18 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
19 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
20 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
21 wages from Defendants.

22 68. Plaintiff and Class Members are entitled to recover from Defendants the greater
23 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
24 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
25 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
26 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

27 69. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
28 and Class Members from knowing, understanding, and disputing the wages paid to them and

1 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
2 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
3 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
4 shown according to proof at trial.

5 70. Class Members that are still employed by Defendants are also entitled to
6 injunctive relief under California Labor Code § 226(h), compelling Defendants to comply with
7 California Labor Code § 226. Accordingly, affected Class Members seek the recovery of
8 attorneys' fees and costs incurred in obtaining this injunctive relief.

9 SIXTH CAUSE OF ACTION

10 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

11 (Violation of Labor Code §§ 201, 202, and 203; Violation of IWC Wage Order)

12 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 72. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
15 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
16 if an employee voluntarily leaves his employment, his or her wages shall become due and
17 payable not later than seventy-two (72) hours thereafter, unless the employee has given
18 seventy-two (72) hours previous notice of an intention to quit, in which case the employee is
19 entitled to his or her wages at the time of quitting.

20 73. During the relevant time period, Defendants willfully failed to pay the Waiting
21 Time Subclass all their earned wages upon termination, including, but not limited to, proper
22 wages, meal period premiums, and rest period premiums either at the time of discharge or
23 within seventy-two (72) hours of their leaving Defendants' employ.

24 74. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
25 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
26 in violation of Labor Code §§ 201 and 202.

27 75. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
28 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,

1 then the wages of the employee shall continue as a penalty from the due date at the same rate
2 until paid or until an action is commenced; but the wages shall not continue for more than thirty
3 (30) days.

4 76. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
5 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
6 members' regular daily wages at their regular hourly rate of pay for each day they were not
7 paid, up to a maximum of thirty (30) days.

8 SEVENTH CAUSE OF ACTION

9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.***

10 (Violation of Business and Professions Code §§ 17200, *et seq.*)

11 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 78. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
14 unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice .
15 ..."

16 79. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
17 be predicated on a violation of any state or federal law. In the instant case, Defendants' policies
18 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
19 suffer injuries-in-fact.

20 80. Defendants' policies and practices violated state law in at least the following
21 respects:

22 (a) Failing to pay all wages earned (including reporting time wages) to
23 Plaintiff and Class Members in violation of Labor Code §§ 510, 1194,
24 1194.2, 1197, and 1198.

25 (b) Failing to provide compliant meal periods without paying Plaintiff and
26 Class Members premium wages for every day said meal periods were not
27 provided in violation of Labor Code §§ 226.7 and 512.
28

- 1 (c) Failing to authorize or permit compliant rest breaks without paying
2 Plaintiff and Class Members premium wages for every day said rest
3 breaks were not authorized or permitted in violation of Labor Code §
4 226.7.
- 5 (d) Failing to permit Plaintiff and Class Members to retain all gratuities paid
6 by customers in violation of Labor Code § 351.
- 7 (e) Failing to provide Plaintiff and Class Members with accurate itemized
8 wage statements in violation of Labor Code § 226.
- 9 (f) Failing to timely pay all earned wages to the members of the Waiting
10 Time Subclass upon separation of employment in violation of Labor
11 Code §§ 201, 202, and 203.

12 81. As alleged herein, Defendants systematically engaged in unlawful conduct in
13 violation of the California Labor Code and IWC Wage Orders, such as failing to pay all wages,
14 failing to provide meal periods and rest breaks or compensation in lieu thereof, failing to
15 furnish accurate wage statements, and failing to pay all wages due and owing upon separation
16 of employment in a timely manner, all in order to decrease their costs of doing business and
17 increase their profits.

18 82. At all relevant times herein, Defendants held themselves out to Plaintiff and
19 Class Members as being knowledgeable concerning the labor and employment laws of
20 California.

21 83. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
22 and Class Members wages and monies, thereby creating for Defendants an artificially lower
23 cost of doing business in order to undercut their competitors and establish and/or gain a greater
24 foothold in the marketplace.

25 84. As a result of Defendants' intentional, willful, purposeful, and wrongful
26 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
27 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
28 according to proof at trial.

85. By violating the foregoing statutes and regulations as herein alleged, Defendants' acts constitute unfair and unlawful business practices under California Business and Professions Code §§ 17200, *et seq.*

86. As a result of the unfair and unlawful business practices of Defendants, as alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and restitution in an amount to be shown according to proof at trial.

87. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)

88. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

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

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

1 91. Defendants' conduct violates numerous Wage Order and Labor Code sections,
2 including, but not limited to, the following:

3 (a) violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 558, 1182.12, 1194,
4 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including
5 reporting time wages) owed to Plaintiff and other aggrieved employees during
6 employment and upon separation of employment as herein alleged;

7 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
8 Plaintiff and other aggrieved employees and failure to pay premium wages for
9 missed meal periods as herein alleged;

10 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
11 other aggrieved employees and failure to pay premium wages for missed rest
12 periods as herein alleged;

13 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
14 statements to Plaintiff and other aggrieved employees as herein alleged;

15 (e) violation of Labor Code § 351 for unlawful retention of gratuities as herein
16 alleged; and

17 (f) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
18 complete records showing, among other things, the hours worked daily by and the
19 wages paid to aggrieved employees.

20 92. Plaintiff is an "aggrieved employee" because he was employed by the alleged
21 violation and had one or more of the violations committed against him, and therefore is properly
22 suited to represent the interests of all other aggrieved employees.

23 93. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
24 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all
25 other aggrieved employees under PAGA.

26 94. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
27 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
28 cited above.

1 95. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred
2 herein.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
5 and judgment against Defendants, jointly and severally, as follows:

6 1. For certification under California Code of Civil Procedure § 382 of the proposed
7 Class, Waiting Time Subclass, and any other appropriate subclasses;

8 2. For appointment of Guadalupe Antonio Sanchez as the class representative;

9 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

10 4. For compensatory damages in an amount according to proof at trial;

11 5. For an award of damages in the amount of unpaid compensation including, but
12 not limited to, unpaid wages, benefits, and penalties;

13 6. For economic and/or special damages in an amount according to proof at trial;

14 7. For liquidated damages pursuant to Labor Code § 1194.2;

15 8. For statutory penalties to the extent permitted by law, including those pursuant
16 to the Labor Code and IWC Wage Orders;

17 9. For injunctive relief as provided by the California Labor Code and California
18 Business and Professions Code §§ 17200, *et seq.*;

19 10. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

20 11. For an order requiring Defendants to restore and disgorge all funds to each
21 employee acquired by means of any act or practice declared by this Court to be unlawful,
22 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
23 Professions Code §§ 17200, *et seq.*;

24 12. For pre-judgment interest;

25 13. For civil penalties;

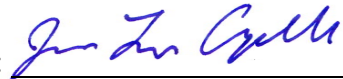
26 14. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
27 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
28 226(e), 1194, and 2698 *et seq.*; and

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15. For such other relief as the Court deems just and proper.

Dated: August 9, 2021

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff Guadalupe Antonio Sanchez