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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YUE ZHOU, GUOHUO ZHENG,
TIANMAO ZHU, YIWEI ZENG

Plaintiffs

vs.

SIN KIONG CHAI a.k.a. SIN-KIONG CHAI
an individual, d.b.a. TASTE OF CHINA; and
HUEI LI CHU CHAI a.k.a. HUEI LI CHU,
an individual, d.b.a. TASTE OF CHINA

Defendants.

CASE NO.: 21-cv-06067-YGR

THIRD AMENDED COMPLAINT

- (1) Failure to Pay Overtime Compensation Under FLSA, 29 USC §§ 207, 216;
- (2) Failure to Pay Minimum Wage Under Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197; California Minimum Wage Order (MW-2007); The Code of the City of Santa Clara, California, §3.20.040;
- (3) Failure to Pay Overtime Compensation Under Cal. Lab. Code §§ 1194, 510, 515;
- (4) Failure to Timely Pay Wages Due and Owning Upon Termination of Employment Under Cal. Lab. Code, §§ 201, 202, 203, 218.5;
- (5) Failure to Provide Rest and Meal Periods Under Cal Lab. Code, §§ 226.7 and 512 and IWC ORDER 5-2001;
- (6) Failure to Furnish Accurate Itemized Wage Statements Under Cal. Lab. Code §226;
- (7) Unfair Competition Under CAL. UCL §§ 17200-17210;
- (8) Private Attorney General Act of 2004

JURY TRIAL DEMANDED

PARTIES

1
2 1. Defendant Sin Kiong Chai a.k.a. Sin-Kiong Chai and Huei Li Chu Chai a.k.a. Huei Li Chu
3 are residents of the Santa Clara County of California.

4 2. Defendant Sin Kiong Chai a.k.a. Sin-Kiong Chai and Huei Li Chu Chai a.k.a. Huei Li Chu
5 are husband and wife, and doing business as Taste of China, and conduct a restaurant business located at
6 1659 Branham Ln, No. I, City of San Jose, County of Santa Clara, California.

7 3. Plaintiff Yue Zhou (“ZHOU”) is a resident of the Santa Clara County of California and
8 was employed by Defendants as a cook.

9 4. Plaintiff Guohuo Zheng (“ZHENG”) is a resident of the Santa Clara County of California
10 and was employed by Defendants as a cook.

11 5. Plaintiff Tianmao Zhu (“ZHU”) is a resident of the Santa Clara County of California and
12 was employed by Defendants as a cook.

13 6. Plaintiff Yiwei Zeng (“ZENG”) is a resident of the Santa Clara County of California and
14 was employed by Defendants as a cook.

JURISDICTION

15
16 7. This Court has federal question jurisdiction over Plaintiffs’ Fair Labor Standards Act
17 (FLSA) claims pursuant to 28 USC § 1331, since this action is authorized and instituted pursuant to 29
18 USC § 216(b).

19 8. Defendants, as the employers, have an annual gross volume of sales no less than \$500,
20 000, and employees engaged in the production or processing of food, or otherwise working on food or
21 food materials, handling and selling food, beverages, and liquors, that have been moved in or produced
22 for commerce by any person. Plaintiffs, as the employees, are engaged in the production or processing of
23 food, or otherwise working on food or food materials for commerce.

24 9. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28
25 U.S.C. § 1367. Plaintiffs’ state law claims are so closely related to their federal law claims that they form
26 part of the same case or controversy under Article III of the United States Constitution.

VENUE

27
28 10. The venue is appropriate in this Court under 28 U.S.C. § 1391 because the events giving

1 rise to this complaint occurred in Santa Clara County, California. Plaintiffs are and were at all times
2 relevant herein a resident of Santa Clara County of California.

3 11. Defendants have its principal place of the restaurant business located at 1659 Branham Ln,
4 No. I, City of San Jose, County of Santa Clara, California.

5 12. A substantial part of the events or omissions giving rise to the claims occurred in Santa
6 Clara County, California. At all times relevant herein, Defendants employed Plaintiffs at its Santa Clara
7 County location and conducted regular, substantial, and sustained business activity in the State of
8 California.

9 **FICTITIOUS NAMED DEFENDANTS**

10 13. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of defendants named herein as DOES 1 through 10, are unbeknownst to Plaintiffs, who thereby sues these
12 defendants by such fictitious names. Plaintiffs will pray leave of this Court to amend this Complaint to
13 allege their true names and capacities once ascertained. Plaintiffs are informed and believe, and thereon
14 allege that each defendant designated herein is responsible in some actionable manner for the occurrences
15 and injuries alleged herein.

16 14. At all times herein relevant, defendants, and each of them, was an owner, a co-owner,
17 an agent, representative, partner, and/or alter ego of its co-defendants, or otherwise acting on behalf of
18 each and every remaining defendant and, in doing the things hereinafter alleged, were acting within the
19 course and scope of their authorities as an owner, a co-owner, an agent, representative, partner, and/or
20 alter ego of its co-defendants, with the full knowledge, permission, and consent of each and every
21 remaining defendant, each co-defendant having ratified the acts of the other co-defendants.

22 15. Plaintiffs are informed and believe, and thereon allege that each of the defendants
23 named herein as DOES 1 through 10, inclusive, were and are in some manner responsible for the actions,
24 acts and omissions herein alleged, and for the damages caused by the defendants, and are, therefore, jointly
25 and severally liable for the damages caused to Plaintiffs.

26 16. Plaintiffs are informed and believe and thereon allege that each of the defendants
27 including Does 1 through 10, inclusive, were, at all times herein relevant, acting in concert with, and in
28 conspiracy with, each and every one of the remaining defendants.

1 17. Wherever appearing in this Complaint, each and every reference to defendants or to
2 any of them is intended to be and shall be a reference to all defendants herein, and to each of them, named
3 and unnamed, including all fictitiously named defendants, unless said reference is otherwise specifically
4 qualified.

5 18. At all times relevant herein, all Defendants are the joint employers of Plaintiffs, and
6 they controlled Plaintiffs' work conditions, wages, and hours, suffer or permit Plaintiffs to work, or have
7 a common-law employment relationship with Plaintiffs, or they participated in and/or ratified the wrongful
8 conduct alleged herein.

9 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 19. At all times relevant herein, the named Defendants and Doe-defendants controlled
11 Plaintiffs' work conditions, wages, and hours, suffered and permitted Plaintiffs to work, and participated
12 in and/or ratified the wrongful conduct alleged herein, and they were the joint employers of Plaintiffs.

13 20. On or about March 9, 2020, Defendants employed ZHOU as a full-time non-exempt
14 cook.

15 21. From March 9, 2020, through July 11, 2021, ZHOU generally worked six (6) days a
16 week, with day-offs on **Wednesdays**.

17 22. From March 9, 2020, through March 15, 2020, on weekdays, ZHOU **worked ten (10)**
18 **hours per day from 10:30 a.m. until 9:30 p.m. with a one-hour shift break between 3:00 p.m. and 4:00**
19 **p.m.** On weekend days, **he worked nine (9) hours per day from 11:30 a.m. until 9:30 p.m.** with a one-hour
20 shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 58 hours per week with 18 hours'
21 overtime.

22 23. From March 16, 2020, through June 15, 2021, on weekdays, ZHOU worked **nine (9)**
23 **hours per day from 10:30 a.m. until 8:30 p.m. with a one-hour shift break between 3:00 p.m. and 4:00**
24 **p.m.** On weekend days, **he worked eight (8) hours per day from 11:30 a.m. until 8:30 p.m. with a one-hour**
25 **shift break between 3:00 p.m. and 4:00 p.m.** As such, he labored 52 hours per week with 12 hours'
26 overtime.

27 24. From June 16, 2021, through July 11, 2021, on weekdays, ZHOU worked **nine and a**
28 **half (9.5) hours** per day from 10:30 a.m. until 9:00 p.m. with a one-hour shift break between 3:00 p.m.

1 and 4:00 p.m. On weekend days, he worked eight and a half (8.5) hours per day from 11:30 a.m. until 9:00
2 p.m. with a one-hour shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 55 hours per week
3 with 15 hours' overtime.

4 25. As orally agreed upon, ZHOU's *net* monthly salary (after federal social security and
5 medical tax, State Disability Insurance, and federal and state income tax withholding) was initially \$4,200
6 and it was raised to \$4,420 on or about January 1, 2021. The payments of his salary were in the form of a
7 combination of checks and cash.

8 26. From June 24 until July 7, 2021, ZHOU took a sick leave because of a shoulder injury
9 sustained at work. On or about July 11, 202, ZHOU quitted his position after Defendants refused to
10 accommodate him for his work injury, and arbitrarily reduced his work hours.

11 27. On or about October 6, 2019, Defendants employed ZHENG as a full-time non-exempt
12 cook.

13 28. From October 6, 2019, through October 19, 2021, ZHENG generally worked six (6)
14 days a week, with day-offs on **Wednesdays**.

15 29. From October 6, 2019, **through March 15, 2020**, on weekdays, ZHENG worked ten
16 (10) hours per day from 10:30 a.m. until 9:30 p.m. with a one-hour shift break between 3:00 p.m. and 4:00
17 p.m. On weekend days, he worked nine (9) hours per day from 11:30 a.m. until 9:30 p.m. with a one-hour
18 shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 58 hours per week with 18 hours'
19 overtime.

20 30. From March 16, 2020, through June 15, 2021, on weekdays, ZHENG worked nine (9)
21 hours per day from 10:30 a.m. until 8:30 p.m. with a one-hour shift break between 3:00 p.m. and 4:00
22 p.m. On weekend days, he worked eight (8) hours per day from 11:30 a.m. until 8:30 p.m. with a one-hour
23 shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 52 hours per week with 12 hours'
24 overtime.

25 31. From June 16, 2021, **through October 19, 2021**, on weekdays, ZHENG worked nine
26 and a half (9.5) hours per day from 10:30 a.m. until 9:00 p.m. with a one-hour shift break between 3:00
27 p.m. and 4:00 p.m. On weekend days, he worked eight and a half (8.5) hours per day from 11:30 a.m. until
28 9:00 p.m. with a one-hour shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 55 hours per

1 week with 15 hours' overtime.

2 32. As orally agreed upon, ZHENG's *net* monthly salary (after federal social security and
3 medical tax, State Disability Insurance, and federal and state income tax withholding) was \$3,500 in 2019
4 and \$3,600 in 2020 and 2021. The payments of his salary were in the form of a combination of checks
5 and cash.

6 33. On or about February 25, 2021, Defendants employed ZHU as a full-time non-exempt
7 cook.

8 34. From February 25, 2021, through June 30, 2021, ZHU generally worked six (6) days
9 a week, with day-offs on Tuesdays.

10 35. From February 25, 2021, through June 15, 2021, on weekdays, ZHU worked nine (9)
11 hours per day from 10:30 a.m. until 8:30 p.m. with a one-hour shift break between 3:00 p.m. and 4:00
12 p.m. On weekend days, he worked eight (8) hours per day from 11:30 a.m. until 8:30 p.m. with a one-hour
13 shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 52 hours per week with 12 hours'
14 overtime.

15 36. From June 16, 2021, through June 30, 2021, on weekdays, ZHU worked nine and a
16 half (9.5) hours per day from 10:30 a.m. until 9:00 p.m. with a one-hour shift break between 3:00 p.m.
17 and 4:00 p.m. On weekend days, he worked eight and a half (8.5) hours per day from 11:30 a.m. until 9:00
18 p.m. with a one-hour shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 55 hours per week
19 with 15 hours' overtime.

20 37. As orally agreed upon, ZHU's *net* monthly salary (after federal social security and
21 medical tax, State Disability Insurance, and federal and state income tax withholding) was \$4,200. The
22 payments of his salary were in the form of a combination of checks and cash.

23 38. In or about September 2019, Defendants employed ZENG as a full-time non-exempt
24 cook.

25 39. From September 2019 through March 15, 2020, ZENG generally worked five (5) days
26 a week, with day-offs on Tuesdays and Wednesdays. On weekdays, ZENG worked ten (10) hours per day
27 from 10:30 a.m. until 9:30 p.m. with a one-hour shift break between 3:00 p.m. and 4:00 p.m. On weekend
28 days, he worked nine (9) hours per day from 11:30 a.m. until 8:30 p.m. with a one-hour shift break between

1 3:00 p.m. and 4:00 p.m. As such, he labored 48 hours per week with 8 hours' overtime.

2 40. From March 16, 2020 through October 26, 2020, ZENG generally worked for four (4)
3 days a week, with day-offs on Tuesdays, Wednesdays, and Thursdays. On weekdays, ZHENG worked
4 nine (9) hours per day from 10:30 a.m. until 8:30 p.m. with a one-hour shift break between 3:00 p.m. and
5 4:00 p.m. On weekend days, he worked eight (8) hours per day from 11:30 a.m. until 8:30 p.m. with a
6 one-hour shift break between 3:00 p.m. and 4:00 p.m. As such, he labored 34 hours per week with 2 hours'
7 overtime.

8 41. As orally agreed upon, ZENG's *net* salary (after federal social security and medical
9 tax, State Disability Insurance, and federal and state income tax withholding) was \$200 per day. The
10 payments of his salary were in the form of a combination of checks and cash.

11 **COUNT 1-FAILURE TO PAY OVERTIME COMPENSATION UNDER FLSA**

12 42. Plaintiffs re-allege and incorporate by reference the allegations in each and every paragraph
13 hereinabove, as though fully set forth hereto.

14 43. Pursuant to 29 USC § 207, "no employer shall employ any of his employees..., for a
15 workweek longer than forty hours unless such employee receives compensation for his employment in
16 excess of the hours above specified at a rate not less than one and one-half times the regular rate at which
17 he is employed."

18 44. Defendants willfully violated these provisions when they failed to compensate Plaintiffs at
19 a rate not less than one and one-half times the regular rate of pay for hours worked in excess of 40 hours
20 per week, as required, by among other things, intentionally understating the hourly rate and the overtime
21 hours.

22 45. Pursuant to 29 USC § 207, Plaintiffs are entitled to overtime compensation for the overtime
23 hours worked for which he has not been compensated, in an amount to be determined at trial. Pursuant to
24 29 USC § 216(b), Plaintiffs are also entitled to an equal amount as liquidated damages in addition to
25 reasonable attorney fees and costs, each in an amount to be determined at trial.

26 **COUNT 2 — FAILURE TO PAY MINIMUM WAGE UNDER STATE LAW**

27 46. Plaintiffs re-allege and incorporate by reference the allegations in each and every
28 paragraph hereinabove, as though fully set forth herein.

47. Pursuant to California Minimum Wage Order (MW-2007) and Cal. Lab. Code, § 1182.12, for any employer who employs 25 or fewer employees, the state minimum wage was: (a) from January 1, 2020, through December 31, 2020, \$12 per hour; (b) from January 1, 2021, to December 31, 2021, \$13 per hour.

48. Pursuant to section 4.100.040 of the San Jose Municipal Code, the city minimum wage was (a) from January 1, 2020, through December 31, 2020, \$15.25 per hour; (b) from January 1, 2021, to December 31, 2021, \$15.45 per hour.

49. Every employer shall pay to each employee minimum wages for “all hours worked.” (Cal. Code Regs., tit. 8, § 11050, subd. 4(A).) The payment of a less amount than the minimum wage is unlawful under Cal. Lab. Code, § 1197.

50. Cal. Lab. Code § 515 (d) (2) provides: “[p]ayment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee’s regular, nonovertime hours, notwithstanding any private agreement to the contrary.”

51. Defendants failed to pay Plaintiffs the minimum wages, and in particular, Defendants paid Plaintiffs nothing for the overtime hours worked, as they salaried employees and the salary compensated them only for their regular, nonovertime hours.

52. Pursuant to Cal. Lab. Code §1194, Plaintiffs are entitled to the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

53. Pursuant to Cal. Lab. Code § 1194.2, Plaintiffs are also entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

COUNT 3- FAILURE TO PAY OVERTIME COMPENSATION UNDER STATE LAW

54. Plaintiffs re-allege and incorporate by reference the allegations in each and every paragraph hereinabove, as though fully set forth herein.

55. Pursuant to Cal. Lab. Code § 510, Industrial Welfare Commission (thereafter “IWC”) Order 5-2001, Defendants were required to pay Plaintiffs for any work in excess of eight (8) hours in one workday and in excess of forty (40) hours in any one workweek at the rate of no less than one and one-half (1-1/2) times their regular rate of pay, and any work in excess of twelve (12) hours in one day and

any work in excess of eight (8) hours on the seventh day of a workweek at the rate of no less than twice their regular rate of pay, and any work in excess of eight (8) hours on any seventh (7th) day of a workweek at the rate of no less than twice the regular rate of pay of an employee.

56. Cal. Lab. Code § 515 (d) (1) provides: “[f]or the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee’s regular hourly rate shall be 1/40th of the employee’s weekly salary.”

57. Cal. Lab. Code § 515 (d) (2) provides: “[p]ayment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee’s regular, nonovertime hours, notwithstanding any private agreement to the contrary.”

58. Defendants willfully violated the provision when they failed to compensate Plaintiffs for their overtime hours as they were salaried employees and the salary compensated them only for their regular, nonovertime hours.

59. Pursuant to Cal. Lab. Code § 1194, Plaintiffs are entitled to the unpaid balance of the full amount of this overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

COUNT 4-FAILURE TO TIMELY PAY WAGES DUE AND OWING UPON TERMINATION OF EMPLOYMENT UNDER STATE LAW

60. Plaintiffs re-allege and incorporate by reference the allegations in each and every paragraph hereinabove, as though fully set forth herein.

61. Pursuant to Cal. Lab. Code § 201, the wages earned and unpaid at the time of discharge are due and payable immediately. Pursuant to Cal. Lab. Code § 202, the wages earned and unpaid at the time of resignation are due and payable not later than 72 hours thereafter.

62. Defendants violated the provisions when they willfully failed to pay Plaintiffs the minimum and overtime wages and other compensations upon the termination of their employment.

63. Pursuant to Cal. Lab. Code § 203, Plaintiffs are entitled to 30 days’ wages as a penalty.

64. Pursuant to Cal. Lab. Code § 218.5, Plaintiffs are entitled to reasonable attorney’s fees and costs.

**COUNT 5-FAILURE TO PROVIDE REST AND MEAL PERIODS UNDER STATE
LAW**

65. Plaintiffs re-allege and incorporate by reference the allegations in each and every paragraph hereinabove, as though fully set forth herein.

66. Pursuant to Cal. Lab. Code §§ 226.7 and 512 and Industrial Welfare Commission (IWC) Order 5-2001, rest periods must be authorized and permitted at the rate of ten (10) minutes for every four (4) hours, and employers must pay nonexempt employees an hour of pay at their regular rate for each workday that a rest break is not provided; meal periods must be authorized and permitted at the rate of thirty (30) minutes for every five (5) hours, and employers must pay nonexempt employees an hour of pay at their regular rate for each workday that a rest period is not provided.

67. Defendants did not authorize and permit Plaintiffs to rest at the rate of ten (10) minutes for every four (4) hours, and/or to have meals at the rate of thirty (30) minutes for every five (5) hours, as Plaintiffs were required to remain on the premises and on duty at all times, ready to serve patrons who frequently arrived at varied odd hours.

68. Plaintiffs are thus entitled to one hour of pay for the rest break violations and one hour of pay for the meal break violations per workday, in a total amount to be determined at trial.

**COUNT 6-FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
UNDER STATE LAW**

69. Plaintiffs re-allege and incorporate by reference the allegations in each and every paragraph hereinabove, as though fully set forth hereto.

70. Pursuant to California Labor Code section 226, every employer shall, semimonthly or at the time of each payment of wages, furnish an employee with an accurate itemized statement in writing.

71. Defendants willfully violated this provision when they knowingly and intentionally failed to furnish Plaintiffs with accurate itemized wage statements by understating, among other things, minimum wages, overtime compensations, split shift premiums, and cash wages. Thus, Defendants failed to report accurately the “gross wages earned,” “total hours worked,” “all applicable hourly rate,” and “all deductions,” within the meaning of subdivision (a) of Cal. Lab. Code § 226. In addition, Defendants failed to show “the last four digits of his or her social security number or an employee identification number

1 other than a social security number” on the wage statement, in violation of Cal. Lab. Code § 226, subd.
2 (a)(7).

3 72. Pursuant to Cal. Lab. Code § 226 (e) (1), Plaintiffs are entitled to recover the greater
4 of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for a
5 subsequent violation, up to an aggregated penalty of four thousand dollars (\$4,000), and reasonable
6 attorney’s fees and costs.

7 **COUNT 7 -UNFAIR COMPETITION UNDER CAL. UCL §§ 17200-17210**

8 73. Plaintiffs re-allege and incorporate by reference the allegations in each and every
9 paragraph hereinabove, as though fully set forth herein.

10 74. Cal. Bus. & Prof. Code §§ 17200-17210 (California’s Unfair Competition Law
11 (“UCL”)) prohibits unlawful, unfair, or fraudulent business acts or practices.

12 75. Defendants have committed, and upon information and belief continue to commit,
13 ongoing unlawful, unfair, or fraudulent business practices within the meaning of the UCL, including, but
14 not limited to:

- 15 a. Failure to pay minimum wages under California law;
- 16 b. Failure to pay overtime compensation under California law;
- 17 c. Failure to provide rest and meal breaks;
- 18 d. Failure to provide accurate itemized wage statements;
- 19 e. Failure to pay wages due upon termination of position;
- 20 f. Failure to prepare and maintain all records required under California law.

21 76. The unlawful, unfair, or fraudulent business practice described above has proximately
22 caused damages to Plaintiffs and to the general public.

23 77. Cal. Bus. & Prof. Code § 17203 authorizes a court to fashion remedies necessary to
24 prevent the use or employment by any person of any practice which constitutes unfair competition, or
25 necessary to restore to any person in interest any money or property, real or personal, which may have
26 been acquired by means of such unfair competition.

27 78. Pursuant to the UCL, Plaintiffs are entitled to restitution of unpaid minimum and
28 overtime compensation.

79. Pursuant to the UCL, Plaintiffs and the general public are entitled to injunctive relief against Defendants' ongoing continuation of such ongoing unlawful, unfair or fraudulent business practices.

COUNT 8—Actions Under Private Attorney General Act of 2004

80. Plaintiffs re-allege and incorporate by reference the allegations in each and every paragraph hereinabove, as though fully set forth hereto.

81. On July 24, 2021, Counsel for Plaintiffs sent a notice to California Labor and Workforce Development Agency ("LWDA") and Defendants pursuant to Cal. Lab. Code § 2699.3. Plaintiffs, by virtue of the attached Exhibit "A," have satisfied all prerequisites to serve as a representative of the general public to enforce California labor laws, including, without limitation, the penalty Pursuant to Cal. Lab. Code § 2699.3 (a) (2) (C).

82. No notice of investigation is received from the LWDA in the statutorily proscribed 65-day period since the mailing of the notice of the action. Plaintiffs hereby amend the Complaint to add this cause of action, as a matter of right provided by Cal. Lab. Code § 2699.3 (a) (2) (C).

83. The civil penalties include but are not limited to the following:

- a. Civil Penalty for each underpaid employee for each pay period for which the employee is underpaid minimum wages of \$100 for an initial violation and of \$250 for each subsequent violation of Cal. Lab. Code §§ 1182.12, 1194, 1194.2, pursuant to Cal. Lab. Code § 1197.1 (a);
- b. Civil penalty in the amount of \$250 per employee per initial itemized statement violation and \$1,000 in each subsequent violation of Cal. Lab. Code § 226, pursuant to Cal. Lab. Code § 226.3;
- c. Civil penalty of \$50 for each employee per day period for each initial violation and \$100 for each subsequent violation of IWC ORDER 5-2001, subd. 12 for failure to provide rest breaks, pursuant to Cal. Lab. Code § 558, IWC Order 5-2001, §20;
- d. Civil penalty of \$50 for each employee per day period for each initial violation and \$100 for each subsequent violation of IWC ORDER 5-2001, subd. 12 for failure to provide meal breaks, pursuant to Cal. Lab. Code § 558, IWC Order 5-2001, §20;

e. Civil penalty of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each subsequent violation of Cal. Lab. Code §§1194, 510, 515 regarding overtime violations, pursuant to Cal. Lab. Code §2699(f)(2).

f. Civil penalty of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each subsequent violation of Cal. Lab. Code, §§ 201, 202, 203, 218.5 regarding failure to pay wages due upon termination, pursuant to Cal. Lab. Code §2699(f)(2).

g. Civil penalty of \$50 for each employee per day period for each initial violation and \$100 for each subsequent violation of IWC ORDER 5-2001, subd. 4(C) for failure to pay split shift premiums, pursuant to Cal. Lab. Code § 558, IWC Order 5-2001, §20

84. Pursuant to Cal. Lab. Code § 2699, Plaintiffs are entitled to be awarded twenty-five percent (25%) of all penalties due under California law, in addition to interest, attorneys' fees and costs. The Court should award seventy-five (75%) percent of the penalties due under California law to the State of California.

PRAYER

WHEREFORE, Plaintiffs demand the following for their claims for relief which is more specifically set forth under the various claims:

First Claim for Relief - Unpaid overtime compensation to be determined at the time of trial and in excess of \$34, 545.44 for ZHOU, \$52, 429.60 for ZHENG, \$9,298.27 for ZHU, and \$12, 480.38 for ZENG, and an equal amount of liquidated damages, plus reasonable attorney fees and costs pursuant to 29 USC § 216(b).

Second Claim for Relief -Unpaid minimum compensation, and an equal amount of liquidated damages to be determined at the time of trial and in excess of \$12,641 for ZHOU, \$22,471 for ZHENG, \$3,436 for ZHU, and \$4,378 for ZENG, plus reasonable attorney fees and costs pursuant to Cal. Lab. Code §§ 1194.2 and 1194;

Third Claim for Relief- Unpaid overtime compensation to be determined at the time of trial and in excess of \$34, 545.44 for ZHOU, \$52, 429.60 for ZHENG, \$9,298.27 for ZHU, and \$12, 480.38 for ZENG, plus reasonable attorney fees and costs pursuant to Cal. Lab. Code § 1194;

1 Fourth Claim for Relief –Waiting time penalties to be determined at the time of trial and in excess
2 of \$6,720 for ZHOU, \$5,731.20 for ZHENG, \$6,688.80 for ZHU, and \$6,900 for ZENG, pursuant to Cal.
3 Lab. Code § 203, and reasonable attorney fees and costs, pursuant to Cal. Lab. Code § 218.5;

4 Fifth Claim for Relief- Premiums to be determined at the time of trial and in excess of \$11,365.60
5 for ZHOU, \$15,198.63 for ZHENG, \$3,009.96 for ZHU, and \$7,741.22 for ZENG.

6 Sixth Claim for Relief- Damages to be determined at the time of trial and in excess of \$2,450 for
7 ZHOU, \$2,450 for ZHENG, \$1,650 for ZHU;

8 Seventh Claim for Relief- Restitution of unpaid wages and Permanent Injunction, pursuant to Cal.
9 Bus. & Prof. Code § 17203;

10 Eighth Claim for Relief- Civil penalties to be determined at the time of trial and in excess of
11 \$404,000;

12 For each claim, prejudgment interest on unpaid wages at the rate of ten percent (10%) per annum,
13 pursuant to California Labor Code §§ 218.6 and 1194;

14 For any such other and further relief as the Court may deem just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs hereby demand a trial on this matter by jury.

17
18 Dated: 12/23/2021

19 
X. Young Lai, Esq. Attorney for Plaintiffs

Exhibit A

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

San Jose, CA 95108
ALBUQUERQUE, NM 87105

Certified Mail Fee

\$3.60

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)

\$11.00

☐ Return Receipt (electronic)

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July 23, 2021

VIA CERTIFIED U.S. MAIL

Sin Kiong Chai a.k.a. Sin-Kiong Chai
& Huei Li Chu Chai a.k.a. Huei Li Chu
d.b.a. Taste of China
1659 Brannan Ln, No. I
San Jose, CA 95118

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE
SECTION 2699.3**

To: Department of Industrial Relations;
and To: Defendants: Sin Kiong Chai a.k.a. Sin-Kiong Chai & Huei Li Chu Chai a.k.a.
Huei Li Chu d.b.a. Taste of China, and its owner, director, officer, or managing agent.

From: Plaintiff: Yue Zhou, on behalf of himself and all current and former employees
who worked at Taste of China located at 1659 Brannan Ln, No. I, San Jose, CA 95118

To whom it may concern:

Defendants have been running a restaurant business called Taste of China located at 1659 Brannan Ln, No. I, San Jose, CA 95118. At all times relevant herein, Defendants set a fixed monthly salary for cooks and cook assistants. For other employees, including kitchen helpers, dishwashers, and waiters, Defendants set a state minimum hourly rate which is below the requisite city minimum hourly rate.

COUNT 1- FAILURE TO PAY MINIMUM WAGE UNDER CAL. LAB. CODES

Pursuant to California Minimum Wage Order (MW-2007) and Cal. Lab. Code, § 1182.12, for any employer who employs 25 or fewer employees, the state minimum wage was: (a) from January 1, 2020, through December 31, 2020, twelve dollars (\$12) per hour; (b) from January 1, 2021, to December 31, 2021, thirteen dollars (\$13) per hour.

Pursuant to section 4.100.040 of the San Jose Municipal Code, the city minimum wage was (a) from January 1, 2020, through December 31, 2020, \$15.25 per hour; (b) from January 1, 2021, through December 31, 2021, \$15.45 per hour.

The payment of a less amount than the minimum wage is unlawful under Cal. Lab. Code, § 1197.

Every employer shall pay to each employee minimum wages for “all hours worked.” (Cal. Code Regs., tit. 8, § 11050, subd. 4(A).) Under California Labor Code section 515, subdivision (d) (2), when an employee works overtime and is not paid anything for that overtime (such as a non-exempt employee being paid a salary), that is a failure to pay the minimum wage for all hours worked. Thus, the cooks and cook assistants were not compensated at all for the overtime hours, as a monthly salary compensated salaried employees only for regular, nonovertime hours. Furthermore, other employees were compensated below the city minimum wages.

COUNT 2- FAILURE TO PAY OVERTIME COMPENSATION

Pursuant to California Labor Code section 510 and Industrial Welfare Commission (“thereafter “IWC”) Order 5-2001, Defendants were required to pay Plaintiff for any work in excess of eight (8) hours in one workday and in excess of forty (40) hours in any one workweek at the rate of no less than one and one-half (1-1/2) times their regular rate of pay, and any work in excess of twelve (12) hours in one day and any work in excess of eight (8) hours on the seventh day of a workweek at the rate of no less than twice their regular rate of pay.

California Labor Code section 515, subdivision (d) (1) provides: “[f]or the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee’s regular hourly rate shall be 1/40th of the employee’s weekly salary.”

California Labor Code section 515, subdivision (d) (2) provides: “[p]ayment of a fixed salary to a nonexempt employee shall be deemed to provide compensation only for the employee’s regular, nonovertime hours, notwithstanding any private agreement to the contrary.”

At all times relevant herein, Defendants paid fixed salaries to the cooks and cook assistants without compensating them for their overtime work hours. In addition, Defendants did not pay sufficient overtime compensations to other employees, as their hourly rates were below the city minimum hourly rate.

COUNT-3-FAILURE TO PROVIDE REST AND MEAL PERIODS

Pursuant to California Labor Code section § 226.7 and IWC order 5-2001, rest periods must be authorized and permitted at the rate of ten (10) minutes for every four (4) hours, and employers must pay nonexempt employees an hour of pay at their regular rate for each workday that a rest period is not provided. Pursuant to California Labor Code section § 512 and IWC order 5-2001, meal periods must be authorized and permitted at the rate of thirty (30) minutes for every five (5) hours, and employers must pay nonexempt employees an hour of pay at their regular rate for each workday that a rest period is not provided.

Defendants willfully violated the provisions when they failed to authorize and permit the employees to have rest periods when the employees worked over four (4) hours, and/or to have meal breaks when the employees worked over five (5) hours, as they were required to remain on the premises and on duty at all times, ready to serve patrons who frequently arrived at varied odd hours.

COUNT 4-FAILURE TO TIMELY PAY WAGES DUE AND OWING UPON TERMINATION OF EMPLOYMENT

Pursuant to California Labor Code section 201, the wages earned and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code section § 202, the wages earned and unpaid at the time of resignation are due and payable not later than 72 hours thereafter.

Defendants violated the provisions when they willfully failed to pay the employees the minimum wages, overtime compensations, split shift premiums, and rest and meal period premiums, upon the termination of their employment.

COUNT 5-FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

Pursuant to California Labor Code section 226, every employer shall, semimonthly or at the time of each payment of wages, furnish an employee with an accurate itemized statement in writing.

Defendants willfully violated this provision when they knowingly and intentionally failed to furnish the employees with accurate itemized wage statements by understating, among other things, minimum wages, overtime compensations, split shift premiums, and cash wages. Thus, Defendants failed to report accurately the “gross wages earned,” “net wages earned,” “all deductions,” “total hours worked,” and “all applicable hourly rate.” and within the meaning of subdivision (a) of Cal. Lab. Code § 226. In addition, you failed to show “the last four digits of [an employee’s] social security number or an employee identification number other than a social security number” on the wage statement, in violation of Cal. Lab. Code § 226, subd. (a)(7).

COUNT 6-FAILURE TO PAY SHIFT-BREAK PREMIUMS

Wage Order No. 5 defines a “split shift” as “a work schedule” that “is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal breaks.” (Cal. Code Regs., tit. 8, § 11050, subd. 2(R).) “When an employee works a split shift, one hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday,” (Cal. Code Regs., tit. 8, § 11050, subd. 4(C).)

Defendants generally set two shifts for the employees, but fail to pay them the shift-break premiums.

CIVIL PENALTIES

The civil penalties include but are not limited to the following:

1. Civil Penalty for each underpaid employee for each pay period for which the employee is underpaid minimum wages of \$100 for an initial violation and of \$250 for each subsequent violation of Cal. Lab. Code §§ 1182.12, 1194, 1194.2, pursuant to Cal. Lab. Code § 1197.1 (a);
2. Civil penalty in the amount of \$250 per employee per initial itemized statement violation and \$1,000 in each subsequent violation of Cal. Lab. Code §226,

- pursuant to Cal. Lab. Code § 226.3;
3. Civil penalty of \$50 for each employee per day period for each initial violation and \$100 for each subsequent violation of IWC ORDER 5-2001, subd. 12 for failure to provide rest breaks, pursuant to Cal. Lab. Code § 558, IWC Order 5-2001, §20;
 4. Civil penalty of \$50 for each employee per day period for each initial violation and \$100 for each subsequent violation of IWC ORDER 5-2001, subd. 12 for failure to provide meal breaks, pursuant to Cal. Lab. Code § 558, IWC Order 5-2001, §20;
 5. Civil penalty of \$50 for each employee per day period for each initial violation and \$100 for each subsequent violation of IWC ORDER 5-2001, subd. 4(C) for failure to pay split shift premiums, pursuant to Cal. Lab. Code § 558, IWC Order 5-2001, §20;
 6. Civil penalty of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each subsequent violation of Cal. Lab. Code §§1194, 510, 515 regarding overtime violations, pursuant to Cal. Lab. Code §2699(f)(2).
 7. Civil penalty of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each subsequent violation of Cal. Lab. Code, §§ 201,202,203, 218.5 regarding failure to pay wages due upon termination, pursuant to Cal. Lab. Code §2699(f)(2).

It is believed that such violations aforementioned are ongoing, systematic, and continuous, and have injured and continue to injure other similarly situated employees. Plaintiff intends to bring an action against Sin Kiong Chai a.k.a. Sin-Kiong Chai & Huei Li Chu Chai a.k.a. Huei Li Chu d.b.a. Taste of China, under the Private Attorneys General Act (“PAGA”) on behalf of him and other current and former employees. If permitted, he will seek any and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 et seq.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'X. Young Lai', is written over a horizontal line.

X. Young Lai, Esq., attorney for Plaintiff