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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

13 NICOLE SHEELER, individually, and on
14 behalf of all others similarly situated,

Plaintiff,

15 vs.

16 SENI CORPORATION, THE FACTORY-
17 MADE BIRD, INC., RICHARD D.
18 DELONG, and DOES 1 through 100,
19 inclusive,

Defendants.

Case No. 21STCV26443

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF, PENALTIES AND
RESTITUTION**

[JURY TRIAL DEMANDED]

20
21 Representative Plaintiff alleges as follows:

INTRODUCTION

22
23
24 1. This is a class and representative action seeking unpaid compensation for wages,
25 meal and/or rest period violations, interest thereon, liquidated damages and other penalties,
26 reimbursement for business-related expenses incurred, injunctive and other equitable relief, and
27 reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, 210, 218,
28 *et seq.*, 223, 225.5, 226, *et seq.*, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, *et seq.*, 1197,

1 1197.1, 1198, 2698, *et seq.*, 2800, 2802, California Business and Professions Code §§ 17200, *et*
2 *seq.* and California Code of Civil Procedure § 1021.5.

3 2. Representative Plaintiff Nicole Sheeler (“Representative Plaintiff” or “Plaintiff”)
4 brings this action individually and on behalf of all other persons similarly situated (“Class
5 Members” and/or the “Plaintiff Class”) who are or have been employed by Defendants Seni
6 Corporation, The Factory-Made Bird, Inc., Richard D. Delong and/or Does 1 through 100,
7 inclusive (collectively “Defendants”) as non-exempt restaurant/bar employees within the State of
8 California within the applicable class period.

9 3. The relevant “class period” begins on July 19, 2017 and extends through trial, based
10 upon the allegation that the violations of California’s wage and hour laws, as described more fully
11 below, have been ongoing throughout that time.

12 4. The relevant period for recovery of penalties under California’s Private Attorneys
13 General Act also begins on July 19, 2020 and extends through trial (i.e., the “PAGA period”),
14 based upon the allegation that the violations of California’s wage and hour laws, as described more
15 fully below, have been ongoing throughout that time.

16 5. Representative Plaintiff and every person employed by the Defendants in California
17 as non-exempt employees within these periods and trial, inclusive, are referred to herein as “Class
18 Members,” “Aggrieved Employees” or both.

19 6. Throughout the class and PAGA periods, Defendants have had a consistent policy
20 of (1) unlawfully denying Representative Plaintiff, Aggrieved Employees and Class Members
21 statutorily-mandated meal and rest periods, (2) failing to pay these workers’ wages in the event of
22 such failures, (3) willfully failing to pay these workers at least the minimum wage for all hours
23 worked, (4) willfully failing to pay these workers’ overtime wages at the correct rate, (5) willfully
24 failing to reimburse these workers for all necessary business-related expenses, (6) willfully failing
25 to provide these workers with accurate semimonthly itemized wage statements reflecting the total
26 number of hours each worked, the applicable deductions, and the applicable hourly rates in effect
27 during the respective pay periods, and (7) willfully failing to pay compensation in a prompt and
28 timely manner to those workers whose employment with Defendants have terminated.

7. Defendants operate a chain of restaurants/taverns within California for which Representative Plaintiff worked as a bartender and server. The Representative Plaintiff is informed and believes and, on that basis, alleges that, within the class period, Defendants employed scores, if not hundreds, of individuals in California to perform these services, employment positions which did not, and currently do not, meet any known test for exemption from the payment of minimum and/or overtime wages, reimbursements for business-related expenses incurred and/or the entitlement to meal or rest periods.

8. Despite actual knowledge of these facts and legal mandates, Defendants have enjoyed and continue to enjoy an advantage over their competition and a resultant disadvantage to their workers by electing not to pay all wages due (including missed meal and rest period premiums) and/or all penalties due (including “waiting time” penalties) to their California-based non-exempt restaurant/bar employees within the State of California within the applicable class period.

9. Representative Plaintiff is informed and believes and, based thereon, alleges that Defendants’ officers knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

10. Despite Defendants’ knowledge of their workers’ entitlements in these respects, Defendants failed to provide same to Representative Plaintiff, Aggrieved Employees and/or Class Members, in violation of California state statutes, the applicable California Industrial Welfare Commission Wage Order, and Title 8 of the California Code of Regulations. This action is brought to redress and end this prolonged pattern of unlawful conduct once and for all.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the claims brought herein for unpaid wages, expense reimbursements, other damages and/or penalties, etc. under, *inter alia*, the applicable Industrial Welfare Commission Wage Order (as effectuated through the California Labor Code), Title 8 of the California Code of Regulations, Labor Code §§ 201-204, 226, 226.7, 512, 1174, 2699 and 2802, *inter alia*, and/or the California Code of Civil Procedure § 1021.5.

12. This Court also has jurisdiction over the claims brought herein for injunctive relief and restitution of ill-gotten benefits arising from Defendants' unfair and/or fraudulent business practices under California Business & Professions Code § 17200, *et seq.*

13. Venue as to Defendants is proper in this judicial district pursuant to California Code of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County where numerous Aggrieved Employees and Class Members worked, transact business, have agents, and are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have had a direct effect on Representative Plaintiff, Aggrieved Employees and those similarly situated within the State of California and within this County.

PLAINTIFF(S)

14. Representative Plaintiff Nicole Sheeler is a natural person who was employed by Defendants as a bartender and server during the class and PAGA periods.

15. In this capacity, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment, as set forth herein.

DEFENDANT

16. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all times herein relevant, Defendants Seni Corporation, The Factory-Made Bird, Inc., Richard D. Delong, and Does 1 through 100 did business within the State of California operating restaurants/taverns.

17. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff, Aggrieved Employees and Class Members within the State of California.

19. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

20. The Representative Plaintiff brings this action individually and on behalf of all persons similarly situated and proximately damaged by Defendants' conduct including, but not necessarily limited to, the following Plaintiff Class:

21. Defendants' officers and directors are excluded from the Plaintiff Class.

22. Pursuant to California Rule of Court 3.765(b), Representative Plaintiff reserves the right to amend or modify the class definition to achieve greater specificity, by further division into sub-classes and/or by limitation to particular issues.

23. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable, to wit.

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. Insofar as Representative Plaintiff is informed and believes and, on that basis,

1 alleges that there are sufficient Class Members to meet the
2 numerosity requirement, the members of the Plaintiff Class are so
3 numerous that joinder of all members is impractical, if not
4 impossible. Membership in the class will be determined upon
5 analysis of employee and payroll, among other, records maintained
6 by Defendants.

7
8 b. Commonality: The Representative Plaintiff and Class Members
9 share a community of interests in that there are numerous common
10 questions and issues of fact and law which predominate over any
11 questions and issues solely affecting individual members, including,
12 but not necessarily limited to:

- 13 1) Whether Defendants maintained a policy and/or practice of
14 failing to provide employees with meal and/or periods and/or
15 failing to pay premium wages to Class Members in the event of
16 such failures;
- 17 2) Whether Defendants failed to pay minimum wages to Class
18 Members for all time worked;
- 19 3) Whether Defendants failed to pay overtime wages to Class
20 Members for all hours worked beyond 40 in a workweek and/or
21 eight in a workday;
- 22 4) Whether Defendants violated California Labor Code §§ 201-
23 204 by failing to pay wages due and owing each pay period
24 and/or at the time that certain Class Members' employment
25 with Defendants terminated;
- 26 5) Whether Defendants violated California Labor Code § 226 by
27 failing to provide accurate semimonthly itemized statements to
28 Class Members of their amounts of gross and net wages, and
total hours worked by each and at all applicable hourly rates in
effect during the respective pay period(s);
- 6) Whether Defendants violated California Labor Code § 1174 by
failing to keep accurate records of employees' hours of work;
- 7) Whether Class Members are entitled to "waiting time"
penalties, pursuant to California Labor Code § 203;
- 8) Whether Defendants failed to reimburse Class Members for all
necessary business expenses incurred during the discharge of
their duties;
- 9) Whether Defendants violated California Business and
Professions Code § 17200, *et seq.* by failing to provide meal
and/or rest breaks, all wages due, and reimbursements for
business-related expenses to Class Members working eligible
shifts.

c. Typicality: The Representative Plaintiff's claims are typical of the
claims of Class Members. The Representative Plaintiff and Class
Members sustained damages arising out of and caused by

Defendants' common course of conduct in violation of law, as alleged herein.

- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff have the same interest in the litigation as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and have retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those applicable to the Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

24. Representative Plaintiff, Aggrieved Employees and Class Members are and were non-exempt restaurant/bar employees within the State of California within the applicable class period within the relevant time period. In these roles, Representative Plaintiff, Aggrieved Employees and Class Members provided restaurant services.

25. As described herein, Defendants knowingly failed to adequately compensate Representative Plaintiff, Aggrieved Employees and Class Members for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the applicable IWC Wage Order, the applicable California Code of Regulations provisions and provisions of the California Labor Code, thereby enjoying a significant competitive edge over other service providers.

1 26. Defendants have declined to pay these wages, even upon their workers'
2 terminations from or their resignation of employment, in blatant violation of California Labor
3 Code § 201 and/or § 202.

4 27. California Labor Code §§ 201 and 202 require Defendants to pay severed
5 employees all wages due and owed immediately upon discharge or within 72 hours of resignation
6 of those positions, in most circumstances. California Labor Code § 203 provides that an employer
7 who willfully fails to timely pay such wages must, as a penalty, continue to pay each subject
8 employee's wages until the back wages are paid in full or an action is commenced, and the payment
9 of such penalty shall continue for a period of time up to 30 days.

10 28. Moreover, according to Defendants' policies, Representative Plaintiff, Aggrieved
11 Employees and/or Class Members were required to incur business expenses related to Defendants'
12 operations but were not fully reimbursed for those expenses.

13 29. Furthermore, despite knowledge of these workers' entitlement to compensation for
14 all hours worked, Defendants violated California Labor Code § 1174(d) by failing to provide or
15 require the use, maintenance or submission of time records by Representative Plaintiff, Aggrieved
16 Employees and Class Members. Defendants also failed to provide these workers with accurate
17 semimonthly itemized statements of the total number of hours worked by each, and all applicable
18 hourly rates in effect during each pay period, in violation of California Labor Code § 226. In failing
19 to provide the required documents, Defendants have not only failed to pay their workers the full
20 amount of compensation due, but have also, at least largely, shielded themselves from their
21 employees' scrutiny by concealing the magnitude and financial impact of their wrongdoing that
22 such documents might otherwise have led workers to discover.

23 30. Representative Plaintiff, Aggrieved Employees and all persons similarly situated
24 are entitled to unpaid compensation, yet, to date, have not received such compensation despite
25 many of them having been terminated by Defendants and/or resigned from Defendants' employ.
26 More than 30 days have passed since certain Aggrieved Employees and Class Members have left
27 Defendants' employ.
28

1 31. As a consequence of Defendants' willful conduct in not paying former employees'
2 compensation for all hours worked in a prompt and timely manner, certain members of the Plaintiff
3 Class are entitled to up to 30 days wages as a penalty under California Labor Code § 203, together
4 with attorneys' fees and costs.

5 32. As a direct and proximate result of Defendants' unlawful conduct, as set forth
6 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
7 including the loss of earnings for hours worked on behalf of Defendants, in an amount to be
8 established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as
9 set forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant
10 to California Labor Code § 203) and penalties for failure to provide semimonthly statements of
11 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
12 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
13 conduct, as set forth herein, Representative Plaintiff, Aggrieved Employees and Class Members
14 are also entitled to recover costs and attorneys' fees pursuant to statute(s).

15 33. Representative Plaintiff seeks injunctive relief prohibiting Defendants from
16 engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff
17 also seek restitution of costs incurred by Representative Plaintiff and Class Members under
18 California's Unfair Competition Law. Unless enjoined, Defendants' unlawful conduct will
19 continue unchecked, while their non-exempt workers bear the financial brunt of Defendants'
20 unlawful conduct.

21 34. Representative Plaintiff Nicole Sheeler has complied with the procedures necessary
22 to maintain a civil action against Defendants for violation of California's Private Attorneys
23 General Act, as specified in California Labor Code § 2699.3.

24 35. On July 16, 2021, Representative Plaintiff Nicole Sheeler served and filed a notice
25 upon the California Labor and Workforce Development Agency ("LWDA") and Defendants in
26 compliance with Labor Code §§ 2699, *et seq.*

FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY WAGES
(California Labor Code §§ 200-204, 510, 558, 1194 and 1198; IWC Wage Order)

36. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

37. Throughout the class period, Representative Plaintiff, Aggrieved Employees and Class Members performed work for Defendants, oftentimes in excess of eight hours in a workday and/or 40 hours in a workweek. The number of hours will be proven at trial.

38. Throughout the class period, Defendants refused to compensate Representative Plaintiff, Aggrieved Employees and Class Members for all of the wages earned, in violation of the applicable IWC Wage Order, the applicable California Code of Regulations provisions and provisions of the California Labor Code.

39. Throughout the class period, Defendants were aware of, and were under a duty to comply with, the overtime provisions of the California Labor Code including, but not limited to, California Labor Code §§ 510, 1194, and 1198.

40. California Labor Code § 510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

41. California Labor Code § 1194(a), in pertinent part, provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage 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 attorneys' fees, and costs of suit.

42. California Labor Code § 1198, in pertinent part, 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.

1 43. Section 2 of the applicable Wage Order defines “hours worked” as “the time during
2 which an employee is subject to the control of the employer and includes all the time the employee
3 is suffered or permitted to work, whether or not required to do so.

4 44. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
5 employees at least the minimum wage set forth therein for all hours worked, which consist of all
6 hours that an employer has actual or constructive knowledge that employees are working.

7 45. By refusing to compensate Representative Plaintiff, Aggrieved Employees and
8 Class Members for overtime wages earned and/or pay levels meeting the California minimum
9 wage, Defendants violated those California Labor Code provisions cited above as well as the
10 applicable IWC Wage Order and California Code of Regulations provisions.

11 46. Defendants’ conduct, as heretofore detailed, represents an underpayment of wages
12 pursuant to California Labor Code §§ 218, *et seq.*, 225.5, 558, 1182.12, 1194.2, 1197, 1197.1 and
13 1198, for which Representative Plaintiff and Class Members seek damages and/or penalties
14 according to proof.

15 47. As a direct and proximate result of Defendants’ unlawful conduct, as set forth
16 herein, Representative Plaintiff and Class Members have sustained damages, including a loss of
17 earnings for hours worked (including overtime hours worked) on behalf of Defendants, in an
18 amount to be established at trial. As a further direct and proximate result of Defendants’ unlawful
19 conduct, as set forth herein, Representative Plaintiff and Class Members are entitled to recover
20 penalties in amounts to be established at trial, as well as interest, liquidated damages, restitution,
21 attorneys’ fees and costs, pursuant to statute(s).

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
24 **(California Labor Code §§ 226.7 and 512)**

25 48. Each and every allegation of the preceding paragraphs is incorporated in this cause
26 of action with the same force and effect as though fully set forth herein.

27 49. At all relevant times, Defendants were aware of and were under a duty to comply
28 with California Labor Code § 226.7 and §512.

1 50. California Labor Code § 226.7 provides:

2 (a) No employer shall require any employee to work during any
3 meal or rest period mandated by an applicable order of the Industrial
4 Welfare Commission.

5 (b) If an employer fails to provide an employee a meal period or
6 rest period in accordance with an applicable order of the Industrial
7 Welfare Commission, the employer shall pay the employee one
8 additional hour of pay at the employee's regular rate of
9 compensation for each work day that the meal or rest period is not
10 provided.

11 51. Moreover, California Labor Code § 512(a) provides:

12 An employer may not employ an employee for a work period of
13 more than five hours per day without providing the employee with
14 a meal period of not less than 30 minutes, except that if the total
15 work period per day of the employee is no more than six hours, the
16 meal period may be waived by mutual consent of both the employer
17 and employee. An employer may not employ an employee for a
18 work period of more than 10 hours per day without providing the
19 employee with a second meal period of not less than 30 minutes,
20 except that if the total hours worked is no more than 12 hours, the
21 second meal period may be waived by mutual consent of the
22 employer and the employee only if the first meal period was not
23 waived.

24 52. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
25 employers provide all applicable meal and/or rest periods to non-exempt employees.

26 53. Section 11 of the applicable IWC Wage Order provides:

27 (A) No employer shall employ any person for a work period of more
28 than five (5) hours without a meal period of not less than 30
minutes...

(B) An employer may not employ an employee for a work period of
more than ten (10) hours per day without providing the
employee with a second meal period of not less than 30
minutes...

(C) If an employer fails to provide an employee a meal period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that
the meal period is not provided.

54. Moreover, Section 12 of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to
take rest periods, which insofar as practicable shall be in the middle
of each work period. The authorized rest period time shall be based

1 on the total hours worked daily at the rate of ten (10) minutes net
2 rest time per four (4) hours or major fraction thereof

3 (B) If an employer fails to provide an employee a rest period in
4 accordance with the applicable provisions of this order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee's regular rate of compensation for each workday that the
7 rest period is not provided.

8 55. Representative Plaintiff, Aggrieved Employees and Class Members were not
9 provided with meal periods of at least 30 minutes for each five-hour work period and/or rest
10 periods of at least net 10 minutes for each four-hour work period, or major fraction thereof. These
11 violations of law were the result of, *inter alia*, Defendants' policies of: (1) not scheduling a meal
12 period as a part of Representative Plaintiff and each Aggrieved Employee's and Class Member's
13 work shift, (2) not allowing these employees to take meal and rest periods until they were released
14 by their supervisors or other bartenders or servers, (3) understaffing client sites in a manner that
15 made it difficult to enjoy timely, full and uninterrupted meal and/or rest periods, and (4) On many
16 occasions, the bartender and servers missed meal and rest breaks altogether, remained "on call"
17 during the pendency of otherwise ostensible break periods, were compelled to wait well beyond
18 the fifth hour to take their meal periods, were interrupted during said breaks and/or were required
19 to "piggyback" breaks in a manner that violated California law.

20 56. By failing to consistently provide full, on-time, uninterrupted and duty-free thirty-
21 minute meal periods and/or net 10-minute rest periods to Representative Plaintiff, Aggrieved
22 Employees and Class Members, Defendants violated the California Labor Code, applicable IWC
23 Wage Order provisions and the applicable California Code of Regulations provisions.

24 57. Representative Plaintiff is informed and believes and, on that basis, alleges that
25 Defendants have either never paid the one hour of compensation to any Aggrieved Employee or
26 Class Member due to Defendants' violations of the applicable IWC Wage Order, the applicable
27 California Code of Regulations provisions and provisions of the California Labor Code and/or
28 have insufficiently paid these premiums.

58. As a direct and proximate result of Defendants' unlawful conduct, as set forth
herein, Representative Plaintiff and Class Members have sustained damages, including lost

1 compensation resulting from missed meal and/or rest periods, in an amount to be established at
2 trial. As a further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
3 Representative Plaintiff and Class Members are entitled to recover penalties in amounts to be
4 established at trial, as well as interest, restitution, attorneys' fees and costs, pursuant to statute(s).

5
6 **THIRD CAUSE OF ACTION**
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
7 **(California Labor Code §§ 226 and 1174)**

8 59. Each and every allegation of the preceding paragraphs is incorporated in this cause
9 of action with the same force and effect as though fully set forth herein.

10 60. California Labor Code § 226(a) provides:

11 Each employer shall semimonthly, or at the time of each payment of
12 wages, furnish each of his or her employees either as a detachable
13 part of the check, draft or voucher paying the employee's wages, or
14 separately when wages are paid by personal check or cash, an
15 itemized wage statement in writing showing: (1) gross wages
16 earned; (2) total number of hours worked by each employee whose
17 compensation is based on an hourly wage; (3) all deductions,
provided that all deductions made on written orders of the employee
may be aggregated and shown as one item; (4) net wages earned; (5)
the inclusive date of the period for which the employee is paid; (6)
the name of the employee and his or her social security number; and
(7) the name and address of the legal entity which is the employer.

18 61. Moreover, California Labor Code § 226(e) provides:

19 An employee suffering injury as a result of a knowing and
20 intentional failure by an employer to comply with subdivision (a) is
21 entitled to recover the greater of all actual damages or fifty dollars
22 (\$50) for the initial pay period in which a violation occurs and one
hundred dollars (\$100) per employee for each violation in a
subsequent pay period, not exceeding an aggregate penalty of four
thousand dollars (\$4,000), and is entitled to an award of costs and
reasonable attorney's fees.

23 62. Finally, California Labor Code § 1174(d) provides:

24 Every person employing labor in this state shall. . . [k]eep, at a
25 central location in the state...payroll records showing the hours
26 worked daily by and the wages paid to...employees.... These records
27 shall be kept in accordance with rules established for this purpose
by the commission, but in any case shall be kept on file for not less
than two years.

63. Defendants have failed to provide timely and accurate itemized wage statements to the Representative Plaintiff, Aggrieved Employees and Class Members in accordance with, *inter alia*, California Labor Code § 201-204, 226, 226.3, 226.7, 512, 1174, 1174.5 and 2810.5. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned or the appropriate deductions of Representative Plaintiff, Aggrieved Employees or Class Members.

64. Specifically, Defendants failed to comply with Labor Code section 226(a) as “gross wages earned,” “total hours worked by the employee,” “net wages earned,” and/or “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in the wage statements of Representative Plaintiff, Aggrieved Employees and/or Class Members, to wit: certain hours worked, and certain premiums due as a result of overtime hours worked and/or failures to provide and/or make available meal and rest breaks were omitted.

65. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are entitled to recover penalties in amounts to be established at trial, as well as attorneys’ fees and costs, pursuant to statute(s).

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

66. Each and every allegation of the preceding paragraphs is incorporated in this cause of action with the same force and effect as though fully set forth herein.

67. California Labor Code § 203 provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

1 68. Numerous Aggrieved Employees and Class Members were employed by
2 Defendants during the class period and were, thereafter, terminated or resigned from their
3 positions, yet they were not paid all premium (e.g., overtime, meal/rest period violations) wages
4 due upon said termination or within 72 hours of said resignation of employment therefrom. Said
5 non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

6 69. More than 30 days have elapsed since certain Aggrieved Employees and Class
7 Members were involuntarily terminated or voluntarily resigned from Defendants' employ.

8 70. As a direct and proximate result of Defendants' willful conduct in this regard,
9 affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages
10 pursuant to California Labor Code § 203 and 256 in an amount to be established at trial, as well as
11 attorneys' fees and costs, pursuant to statute(s).

12
13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**
15 **(California Labor Code §§ 406 and 2802)**

16 71. Each and every allegation of the preceding paragraphs is incorporated in this cause
17 of action with the same force and effect as though fully set forth herein.

18 72. Throughout the class period, Defendants required the Representative Plaintiff,
19 Aggrieved Employees and Class Members to incur expenses related to the business operations of
20 Defendants. These expenses include(d), without limitation, use of their personal cellular devices
21 and/or transportation vehicles for company purposes and/or uniform purchases and maintenance.
22 These expenditures were incurred in direct consequence of the discharge of the duties of
23 Representative Plaintiff, Aggrieved Employees and Class Members, or of their obedience to the
24 directions of the employer and have not yet been reimbursed by Defendants.

25 73. Throughout the class period, Defendants were aware of and were under a duty to
26 comply with various provisions of the California Labor Code, including, but not necessarily
27 limited to §§ 406 and 2802.
28

1 74. California Labor Code § 406 provides:

2 Any property put up by an employee, or applicant as a part of the contract
3 of employment, directly or indirectly, shall be deemed to be put up as a bond
4 and is subject to the provisions of this article whether the property is put up
on a note or as a loan or an investment and regardless of the wording of the
agreement under which it is put up.

5 75. California Labor Code § 2802(a) provides:

6 An employer shall indemnify his or her employee for all necessary
7 expenditures or losses incurred by the employee in direct consequence of
the discharge of his or her duties, or of his or her obedience to the directions
8 of the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

9 76. By requiring the Representative Plaintiff, Aggrieved Employees and Class
10 Members to incur uncompensated expenses in direct consequence of the discharge of their duties,
11 Representative Plaintiff, Aggrieved Employees and Class Members were forced and/or brought to
12 contribute to the capital and expenses of Defendants' business which is, legally, a cash bond and
13 which must be refunded by Defendants to each affected worker.

14 77. California Labor Code § 2802 (b) and (c) provide for interest at the statutory post
15 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
16 attorneys' fees and costs incurred to collect reimbursement.

17 78. Therefore, Representative Plaintiff demands reimbursement for expenditures or
18 losses incurred by themselves and Class Members in direct consequence of the discharge of their
19 duties, or of their obedience to the directions of the employer, plus return of all cash bonds or other
20 coerced investments in the business of Defendants, with interest at the statutory rate, plus
21 attorneys' fees and costs.

22
23 **SIXTH CAUSE OF ACTION**
24 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
(California Business & Professions Code §§ 17200-17208)

25
26 79. Each and every allegation of the preceding paragraphs is incorporated in this cause
27 of action with the same force and effect as though fully set forth herein.
28

1 was/were employed by Defendants and were among the employees against whom the violations
2 of law articulated in this Complaint were committed.

3 86. These Aggrieved Employees share each and every one of the factual underpinnings
4 and predicate violations articulated in the preceding paragraphs of this Complaint with Class
5 Members and the Representative Plaintiff.

6 87. As set forth above, the Representative Plaintiff has met all of the requirements set
7 forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants
8 for violations of (and/or recovery on behalf of the State of California under) California's Private
9 Attorneys General Act.

10 88. Representative Plaintiff Nicole Sheeler brings this action on direct and/or indirect
11 behalf of all Aggrieved Employees, alleging violations of the California Labor Code provisions
12 cited in the preceding paragraphs.

13 89. As a direct and proximate result of Defendants' unlawful conduct, as set forth
14 herein, Representative Plaintiff, Aggrieved Employees and the State of California are entitled to
15 recover penalties as provided by California Labor Code § 2699, in an amount to be established at
16 trial, as well as costs and attorneys' fees, pursuant to statute(s).

17
18 **RELIEF SOUGHT**

19 **WHEREFORE, the Representative Plaintiff**, on behalf of herself, in a qui tam
20 representative capacity and/or behalf of the proposed Plaintiff Class, prays for judgment and the
21 following specific relief against Defendants, and each of them, jointly and separately, as follows:

22 1. That the Court declare, adjudge and decree that this action is a proper class action
23 and certify the proposed Class and/or any other appropriate subclasses under California Code of
24 Civil Procedure § 382;

25 2. That the Court declare, adjudge and decree that Defendants willfully violated their
26 legal duties to pay all wages due under the California Labor Code, the applicable California
27 Industrial Welfare Commission Wage Order and the applicable California Code of Regulations
28 provisions;

1 3. That the Court make an award to the Representative Plaintiff and Class Members
2 of one hour of pay at each employee's regular rate of compensation for each workday that a meal
3 period was not adequately provided;

4 4. That the Court make an award to the Representative Plaintiff and Class Members
5 of one hour of pay at each employee's regular rate of compensation for each workday that a rest
6 period was not adequately authorized and permitted;

7 5. That the Court make an award to the Representative Plaintiff and Class Members
8 of penalties, pursuant to California Labor Code §§ 203, 226, 558 and 1174.5 and/or liquidated
9 damages pursuant to § 1194.2, in amounts to be proven at trial;

10 6. That the Court order Defendants to pay restitution to the Representative Plaintiff
11 and Class Members due to Defendants' unlawful activities, pursuant to California Business and
12 Professions Code §§ 17200-17208;

13 7. That the Court further enjoin Defendants, ordering them to cease and desist from
14 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

15 8. For interest on the amount of any and all economic losses, at the prevailing legal
16 rate(s);

17 9. That the Court declare, adjudge and decree that this action is a proper representative
18 action and that one or more Representative Plaintiff has standing to pursue it, pursuant to California
19 Labor Code § 2699, *et seq.*;

20 10. That the Court make an award of civil penalties to Aggrieved Employees and the
21 State of California, pursuant to California Labor Code § 2699, *et seq.*;

22 11. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §
23 1021.5, and Labor Code §§ 218.5 and/or 2699, *et seq.*;

24 12. For costs of suit and any and all such other relief as the Court deems just and proper;
25 and

26 13. For all other Orders, findings and determinations identified and sought in this
27 Complaint.
28

COLE & VAN NOTE
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

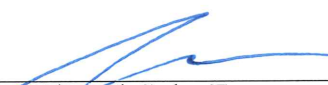
JURY DEMAND

Representative Plaintiff, on behalf of herself, and in her various representative capacities hereby demands a trial by jury on all issues triable by jury.

Dated: September 24, 2021

COLE & VAN NOTE

By:



Scott Edward Cole, Esq.
Attorneys for Representative Plaintiff

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Cole & Van Note, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

FIRST AMENDED COMPLAINT FOR DAMAGES, DECLARATORY AND INJUNCTIVE RELIEF, PENALTIES AND RESTITUTION

X	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
	By personal delivery.
	By e-mail transmission to the e-mail address(es) below.
	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

Seni Corporation
c/o Nicole Senff – Agent for Service of Process
21747 Lassen Street, #5
Chatsworth, CA 91311

The Factory-Made Bird
c/o Richard D. Delong
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Castaic, CA 91384

Richard D. Delong
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I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on September 24, 2021.

Nicole Randle

Nicole Randle