

Justin Lo (SBN 280102)
Justin@caworklawyer.com
 Edward Kim (SBN 183022)
ed@caworklawyer.com
 May T. To (SBN 305268)
may@caworklawyer.com
WORK LAWYERS, PC
 22939 Hawthorne Blvd., #202
 Torrance, CA 90505
 Phone: (424) 355-8535
 Fax: (949) 258-8970

Attorneys for Plaintiff LIEN SAM HO, as an individual and on behalf of all similarly situated employees, and as representative of the State of California and the Labor and Workforce Development Agency

SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF LOS ANGELES

LIEN SAM HO, as an individual and on
 behalf of all similarly situated employees,

Plaintiff.

v.

RICHMOORE HOLDING, INC., a California
 corporation doing business as Queen Seafood;
 RICHWELL GROUP, INC., a California
 corporation doing business as Maxfield
 Seafood; MAXFIELD GROUP, INC., a
 California corporation; EL SURENO FOODS,
 INC., a California corporation and PHILLIP
 CHEN, an individual; and DOES 1 - 50,
 inclusive,

Defendant(s).

Case No.: **22STCV12706**

**CLASS ACTION COMPLAINT FOR
 DAMAGES, INJUNCTIVE RELIEF, AND
 RESTITUTION**

1. Failure to Pay All Overtime Wages
 (Violation of Labor Code §§ 204, 510,
 558, 1194, and 1198);
2. Failure to Pay Minimum Wages
 (Violation of Labor Code §§ 1182.12,
 1194, 1194.2, and 1197);
3. Meal Period Violations (Violation of
 Labor Code §§ 226.7, 512, and 558);
4. Rest Period Violations (Violation of
 Labor Code §§ 226.7, 516, and 558);
5. Failure to Reimburse Necessary
 Business Expenses (Violation of Labor
 Code §§ 2812 and 2804);
6. Failure to Pay Wages Due at Separation
 of Employment (Violation of Labor
 Code §§ 201, 202, and 203);
7. Failure to Issue Accurate Itemized
 Wage Statements (Violation of Labor
 Code §§ 226, subd. (a) and (e));

8. Unfair Business Practices (Violation of Bus. & Prof. Code §§ 17200 et seq.); and
9. Civil Penalties Under PAGA (Labor Code § 2699, et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff Lien Sam Ho (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this Representative Action Complaint against Defendants RICHMOORE
3 HOLDING, INC., a California corporation doing business as Queen Seafood, RICHWELL
4 GROUP, INC., a California corporation doing business as Maxfield Seafood, MAXFIELD
5 GROUP, INC., a California corporation, EL SURENO FOODS, INC., a California corporation,
6 and PHILLIP CHEN, an individual, and DOES 1- 50 (collectively “Defendants”), inclusive, and
7 on information and belief, alleges as follows:

8 **JURISDICTION AND VENUE**

9 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
10 action for recovery of unpaid wages and penalties under California Labor Code §§ 204, 226 *et*
11 *seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804 and 2698
12 *el seq.*, and Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and
13 Industrial Welfare Commission Wage Order 7-2001 (“Wage Order 7”), in addition to seeking
14 declaratory relief and restitution. This action is brought pursuant to California Code of Civil
15 Procedure § 382.

16 2. The California Superior Court has jurisdiction in the matter because the individual
17 claims are under the seventy-five thousand-dollar (\$75,000.00) individual jurisdictional threshold
18 and the five million-dollar (\$5,000,000) aggregate jurisdictional threshold for Federal Court and,
19 upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State
20 of California. Further, there is no federal question at issue as the issues herein is based solely on
21 California Statutes and law including the California Labor Code, Industrial Welfare Commission
22 Wage Orders, Code of Civil Procedure, Rule of Court, and Business and Professions Code.

23 3. Venue is proper in this judicial district pursuant to California Code of Civil
24 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
25 occurred in Los Angeles. Defendants own, maintain offices, transact business, have an agent or
26 agents within the County of Los Angeles, and/or otherwise are found within the County of Los
27 Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of
28 process.

THE PARTIES

4. Plaintiff was employed by the Defendants on or about April 19, 2021 to August 26, 2021, in Los Angeles County. Plaintiff was employed by the Defendants during the Class Period as a non-exempt Sales Associates and was entitled to compensation for all hours worked, overtime compensation, and penalties from Defendants. Each of the Plaintiff Class members are identifiable, current and/or formerly similarly situated persons who were employed as employees, both exempt and non-exempt, including but not limited to Sales Associates and other related positions in California for the Defendants during the Class Period.

5. Plaintiff seeks to represent a class of employees comprised of two main subclasses: (1) those sales employees who performed non-exempt duties but were improperly designated as exempt during the relevant class period (_____, 2018 to the present, hereinafter referred to as "Class Period") and (2) all employees, whether exempt, non-exempt or misclassified, but who were subject to Defendants' non-compliant business expense reimbursement policies/practices.

6. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident and resides in the County of Los Angeles. During the four years immediately preceding the filing of this action and within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a sales employee in Los Angeles. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 204, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804 2698 *et seq.*, California's Unfair Competition Law, and applicable Wage Order(s).

7. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business within the County of Los Angeles and the State of California by employing non-exempt employees in various capacities.

1 8. Plaintiff is informed and believes, and thereon alleges, that Philip Y. Chen and the
2 entities listed above are jointly and severally liable under alter ego and single-enterprise liability.
3 Plaintiff is informed and believes that Defendants, PHILIP Y. CHEN, RICHMOORE HOLDING,
4 INC., RICHWELL GROUP, INC., MAXFIELD GROUP, INC., and EL SURENO FOODS, INC.
5 (collectively, "Defendants"), constitute a single integrated enterprise characterized by a common
6 or centralized control of labor, common ownership and/or management circle, common business
7 address and interrelation of business operations. Plaintiff alleges Defendants exercised a common
8 control of labor (as evidenced by a single set of employment practices and policies set forth in a
9 employment handbook which applies to all employees), common ownership and management by
10 PHILIP Y. CHEN, Plaintiff further alleges that PHILIP Y. CHEN has exercised control and
11 dominion over said entities with a disregard for the separate legal status of the entities in an
12 attempt to commit the violations set forth herein. Plaintiff believes that said entities operated as a
13 single enterprise to achieve a common business purpose Further, Plaintiff alleges Defendants are
14 the alter ego of each other, that there exists a unity of interest and ownership between them, such
15 that any individuality and separateness between each of them have ceased. Adherence to the
16 separate existence of PHILIP Y. CHEN, RICHMOORE HOLDING, INC., MAXFIELD GROUP,
17 INC., EL SURENO FOODS, INC., and RICHWELL GROUP, INC. would permit an abuse of
18 the corporate privilege and would sanction fraud and promote injustice.

19 9. Plaintiff does not know the true names or capacities, whether individual, partner,
20 or corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
21 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
22 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
23 and believes, and based thereon alleges, that each of said fictitious Defendants, whether
24 individual, partners, or corporate, were responsible in some manner for the acts and omissions
25 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
26 to the unlawful employment practices, wrongs, injuries and damages complained of herein.
27
28

1 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
3 Classes.

4 11. At all times herein mentioned, each of said Defendants participated in the doing
5 of the acts hereinafter alleged to have been done by the named Defendants, and furthermore, the
6 Defendants, and each of them, were the agents, servants, and employees of each and every one of
7 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
8 were acting within the course and scope of said agency and employment. Defendants, and each
9 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
10 omissions complained of herein.

11 12. At all times mentioned herein, Defendants, and each of them, were members of
12 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
13 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
14 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
15 members of the Classes.

16 **GENERAL FACTUAL ALLEGATIONS**

17 13. Defendants are in the business of selling wholesale seafood to other businesses,
18 including casinos, restaurants, hotels, and markets (“clients”). Plaintiff was employed by
19 Defendants as a sales employee from approximately April 19, 2021 to approximately August 26,
20 2021 based out of Defendants’ offices located in the City of Industry, Angeles County. Plaintiff’s
21 primary duties, which were consistently non-exempt in character, included making sales,
22 purchasing meat products, processing and taking orders, taking phone calls, corresponding with
23 clients via e-mails and telephone, finding new clients, and cold calling for new customers. Unless
24 otherwise specified, all allegations contained herein occurred during Plaintiff’s employment with
25 Defendants.

26 14. Defendants classified Plaintiff and other putative class members in sales roles as
27 exempt even though the employees’ assigned duties did not fall within the recognized exemptions
28 under California law (pursuant to Labor Code section 515(a) and/or the applicable Wage Order.)

Specifically, Plaintiff and putative class members primarily performed duties which did not require exercise of discretion or independent judgment, which did not involve the management of two or more employees for more than fifty percent of the time and which did not directly involve the management or servicing of Employer's air cargo transport business. Furthermore, the sales duties performed by Plaintiff and putative class members from Defendants' offices and/or the employees' respective homes for more than fifty percent of the time throughout the Class Period, such that the outside sales exemption does not apply to Plaintiff and other putative class members who were misclassified by Defendants. Moreover, the duties of Plaintiff and similarly aggrieved employees did not involve the specialized education, training, or skills which would qualify for a professional exemption.

15. Defendants employed Plaintiff as a sales employee without managerial responsibilities but misclassified her as an exempt employee. Plaintiff was employed by Defendants as a sales manager from approximately April 19, 2021 to August 28, 2021. Although Plaintiff was given the illusory title of a "sales manager," Plaintiff was a sales representative performing non-exempt duties without any supervisory or managerial duties. Plaintiff's primary duties included the selling of seafood products to restaurants, markets, and other customers. Plaintiff would take phone calls, communicate with customers about the price and delivery of goods, and collect payment for invoices. These duties were frequently and regularly performed either at Defendants' offices or at Plaintiff's home for well over fifty percent of Plaintiff's work time. Plaintiff is informed and believes that the duties and manner in which those duties were performed were consistent with the experience of other putative class members misclassified as exempt by Defendants. Due to this misclassification, Defendants treated Plaintiff as ineligible for overtime compensation, mandated meal and rest periods and other wage and hour provisions of the Labor Code. Plaintiff is informed and believes that other putative class members in sales positions were similarly misclassified by Defendants, and as a consequence, similarly suffered the same violations as Plaintiff.

16. By designating Plaintiff and other putative class members as exempt, Defendants required Plaintiff and other misclassified class members to work more than 8 hours a day and/or

1 40 hours per week without lawful compensation. For the same reasons, Defendants failed to
2 include all of Plaintiff and other putative class members' compensable work time for calculation
3 of wages to be paid. Defendants regularly failed to pay to Plaintiff and other putative class
4 members minimum wages and/or overtime for compensable work time spent under the control of
5 Employer that was not recorded on their wage statements and/or timecards. For example, Plaintiff
6 regularly and consistently continued to perform her work duties from home after her scheduled
7 work shift, communicating with customers, finalizing sales/orders, as well as answering emails
8 and texts. This additional work time amounted to several hours per day yet was wholly
9 uncompensated because Defendants misclassified Plaintiff as exempt.

10 17. Plaintiff and other putative class members also suffered violations for unpaid
11 wages, including violations for failure to pay overtime and minimum wage, due to Defendants'
12 policies and practices which negatively impacted non-exempt employees regardless of whether
13 properly classified as non-exempt or misclassified as exempt. Specifically, Defendants required
14 all employees, regardless of classification, to clock in/out for the beginning and end of work shifts,
15 as well as the beginning and end of meal periods ostensibly provided. Defendants implemented
16 a time-recording system using an electronic fingerprint scanner which recorded the exact time
17 any fingerprint scans were made, yet Employers modified, manipulated or fabricated scan times
18 which consistently fell exactly on the hour or half-hour, such that any time worked before a clock-
19 in time mark or after a clock-out time mark was not recorded and included in calculation of wages
20 to be paid. In other words, Defendants deprived Plaintiff and other putative class members of
21 compensation for time worked through illegal time rounding.

22 18. Plaintiff and other putative class members, whether classified as exempt or non-
23 exempt, were also not reimbursed for all necessary expenses incurred in the performance of their
24 job duties. Defendants required Plaintiff and other putative class members to use their cellular
25 telephones, home and/or personal internet connection, automotive vehicles, and home office
26 space to perform their job duties. Plaintiff and other putative class members did not receive any
27 reimbursement for these expenses.

28 19. In addition to unlawfully depriving Plaintiff and other putative class members of

mandated meal and rest periods through misclassification as exempt employees, Defendants failed to authorize and permit all required meal and rest periods for Plaintiff and other putative class members because, upon information and belief, Defendants maintained unlawful meal/rest period policies/practices. In order to curtail labor costs, Defendants regularly failed to staff enough employees to provide sufficient coverage to maintain their business operations, so Plaintiff and other putative class members could not both complete their assigned daily duties and take complete, timely and uninterrupted meal and rest breaks. Defendants prioritized completion of daily duties ahead of meal and rest period compliance. Defendants failed to provide Plaintiff and other putative class members with an additional hour of premium pay at the regular rate of pay for each rest and meal period violation, as required by Labor Code section 226.7. With respect to rest periods, employers' written policies are facially non-compliant because employees were ostensibly given rest periods "when working conditions permit" and contingent upon supervisor approval, and not based upon time already worked, as required by Labor Code section 226.7 and the applicable Wage Order.

20. As a result of the violations described above, Plaintiff experienced collateral or derivative violations. Specifically, Defendants failed to provide Plaintiff and other putative class members with accurate itemized wage statements in writing in compliance with Labor Code section 226 and failed to compensate Plaintiff and other putative class members for all wages owed at the time employment with Defendants had ended.

ADMINISTRATIVE PREREQUISITE

21. Prior to filing this Complaint, on September 22, 2021, Plaintiff gave written notice by electronic filing to the Labor Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-801335-20 and by certified mail to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violations as required by Labor Code section 2699.3. Thereafter, on January 13, 2022, Plaintiff submitted an amended notice to the LWDA and provided Defendants with certified mail copies of the amended notice.

22. A true and correct copy of Plaintiff's letters sent to the LWDA and Defendants, dated September 22, 2021, and January 13, 2022, are attached hereto as Exhibits A and B. As of

1 the filing of this complaint, LWDA has not responded.

2 23. Under Labor Code § 2699.3, subdivision (a), a Plaintiff may bring a cause of
3 action under PAGA only after giving notice to the Labor Workforce Development Agency
4 (“LWDA”) and the employer of the Labor Code sections alleged to have been violated, and
5 after receiving notice from the LWDA of its intention not to investigate, or after 65 days have
6 passed without notice.

7 24. The LWDA has not responded to the notice within the 65-day period.

8 **CLASS ALLEGATIONS**

9 25. Plaintiff brings this action on behalf of herself and all other similarly situated
10 persons, as a class action pursuant to California Civil Code of Procedure section 382 on behalf of
11 himself and all other similarly situated persons in the Plaintiff Class, which is composed of and
12 defined as follows:

13 (a) Subclass One (Meal Periods): All employees employed by Defendants in a nonexempt
14 sales capacity during the Class Period in California who Defendants nevertheless
15 misclassified as exempt and therefore treated as ineligible for legally mandated meal
16 periods for shifts exceeding five hours or a second meal period for shifts exceeding
17 ten hours.

18
19 (b) Subclass Two (Rest Periods): All employees employed by Defendants in a nonexempt
20 sales capacity during the Class Period in California who Defendants nevertheless
21 misclassified as exempt and therefore treated as ineligible for legally mandated rest
22 periods for shifts greater than four hours or major fraction thereof.

23
24 (c) Subclass Three (Overtime): All employees employed by Defendants in a nonexempt
25 sales capacity during the Class Period in California who Defendants nevertheless
26 misclassified as exempt and therefore treated as ineligible for legally mandated
27 overtime compensation for hours worked in excess of eight hours per day or forty
28 hours per week.

1
2 (d) Subclass Four (Minimum Wage): All employees employed by Defendants in a
3 nonexempt sales capacity during the Class Period in California who Defendants
4 nevertheless misclassified as exempt and therefore treated as ineligible for legally
5 mandated overtime compensation for hours worked in excess of eight hours per day
6 or forty hours per week, such that they received NO compensation for overtime hours,
7 including the lawful minimum wage.
8

9 (e) Subclass Five (Waiting Penalties): All former employees employed by Defendants in
10 a nonexempt sales capacity during the Class Period in California who Defendants
11 nevertheless misclassified as exempt and therefore treated as ineligible for wage and
12 hour protections afforded to non-exempt employees in the Labor Code, such that
13 Defendants failed to all wages owed, in the form of unpaid minimum or overtime
14 wages, or wages in the form of meal and rest period premiums, at the time of
15 separation from employment with Defendants.
16

17 (f) Subclass Six (Wage Statements): All employees employed by Defendants in a
18 nonexempt sales capacity during the Class Period in California who Defendants
19 nevertheless misclassified as exempt and therefore treated as ineligible for wage and
20 hour protections afforded to non-exempt employees in the Labor Code, such that as a
21 consequence, Defendants failed to issue accurate and complete wage statements
22 setting forth all of the information required under Labor Code section 226.
23

24 (g) Subclass Seven (Expense Reimbursements): All employees employed by Defendants
25 during the Class Period in California, regardless of whether classified by Defendants
26 as exempt or nonexempt, who (1) incurred necessary business expenses during the
27 Class Period, (2) were subject to the same or substantially similar reimbursement
28

1 policies, practices and/or reimbursement-related statutes and regulations as Plaintiff,
2 and (4) were not reimbursed for said expenses in violation of Labor Code section 2802.
3

4 (h) Subclass Eight (UCL): All current and former California employees who work or
5 worked for Defendant during the Class Period, regardless of exempt or nonexempt
6 classification, and who suffered injury, including lost money, as a result of
7 Defendant's unfair competition, including but not limited to misclassification as
8 exempt employees (thereby suffering wage and hour violations for unpaid wages,
9 missed, delayed or interrupted meal/rest periods, inaccurate wage statements, and
10 unpaid waiting penalties), and/or unpaid expense reimbursements.
11

12 26. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
13 or modify the Class description with greater specificity or further division into subclasses or
14 limitation to particular issues.

15 27. This action has been brought and may be maintained as a class action pursuant to
16 Code of Civil Procedure § 382 because there is a well-defined common interest of many persons
17 and it is impractical to bring them all before the Court.

18 28. This Court should permit this action to be maintained as a class action pursuant to
19 California Code of Civil Procedure § 382 because:

20 a) The questions of law and fact common to the Plaintiff Class predominate over any
21 question affecting only individual members;

22 b) A class action is superior to any other available method for the fair and efficient
23 adjudication of the claims of the members of the Plaintiff Class;

24 c) The Plaintiff Class is so numerous that it is impractical to bring all members of the
25 Class before the Court;

26 d) Plaintiff and the other members of the Plaintiff Class will not be able to obtain
27 effective and economic legal redress unless the action is maintained as a class action;
28

1 e) Plaintiff and the other members of the Plaintiff Class will not be able to obtain
2 effective and economic legal redress unless the action is maintained as a class action;

3 f) There is a community of interest in obtaining appropriate legal and equitable relief
4 for the common law and statutory violations and other improprieties, and in obtaining adequate
5 compensation for the damages and injuries which Defendants' actions have inflicted upon the
6 Plaintiff Class;

7 g) There is a community of interest in ensuring that the combined assets and available
8 insurance of the Defendants are sufficient to adequately compensate members of the Plaintiff
9 Class for the injuries sustained;

10 h) Without class certification, the prosecution of separate actions by individual
11 members of the Plaintiff Class would create a risk of:

12 1) Inconsistent or varying adjudications with respect to individual members
13 of the Plaintiff Class which would establish incompatible standard of
14 conduct for the Defendants; and/or

15 2) Adjudications with respect to the individual members which would, as a
16 practical matter, be dispositive of the interests of other members not
17 parties to the adjudications, or would substantially impair or impede their
18 ability to protect their interests, including but not limited to the potential
19 for exhausting the funds available from those parties who are, or may be,
20 responsible for Defendants; and

21 i) Defendants have acted or refused to act on grounds generally applicable to the
22 Plaintiff Class, thereby making final injunctive relief appropriate with respect to the Class as a
23 whole.

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay All Overtime Wages**

26 **(Labor Code sections 510, 1194-1197; 8 CCR section 11070 (3))**

27 **(Subclasses (a) – (e), (h), Against All Defendants)**

28 29. Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above

1 paragraphs of this complaint as if fully alleged herein.

2 30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194-
3 1197, which provide non-exempt employees are entitled to overtime wages for all overtime hours
4 worked and provide a private right of action for the failure to pay all overtime compensation for
5 overtime work performed.

6 31. At all times relevant herein, Defendants were required to properly pay Plaintiff
7 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
8 Code § 1194 and Wage Order 8. Wage Order 8, § 3 requires an employer to pay an employee
9 “one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess
10 of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek.

11 32. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
12 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
13 Class at one and one-half times their regular rate of pay for such hours.

14 33. The foregoing policies and practices are unlawful and create entitlement to
15 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
16 premiums owing, including interest thereon, statutory, and civil penalties, attorney’s fees, and
17 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, applicable
18 Wage Order, and Code of Civil Procedure § 1021.5.

19 **SECOND CAUSE OF ACTION**

20 **Failure to Pay Minimum Wages**

21 **(Labor Code sections 1194-1197; 8 CCR section 11070 (3))**

22 **(Subclasses (a) – (e), (h), Against All Defendants)**

23 34. Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above
24 paragraphs of this complaint as if fully alleged herein.

25 35. Wage Order 7, § 4 and California Labor Code §§ 1194-1197 establish the right of
26 employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor
27 Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
28 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with

attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

36. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 8.

37. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

38. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 7.

39. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and civil penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 204, 558, 1194-1197, applicable Wage Order, and Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

Meal Period Violations

(Labor Code sections 226.7, 512; 8 CCR section 11070 (11))

(Subclasses (a) – (e), (h), Against All Defendants)

40. Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above paragraphs of this complaint as if fully alleged herein.

1 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed in their affirmative obligation to provide all of their non-exempt employees in California,
3 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
4 in accordance with the mandates of the California Labor Code and Wage Order 7, § 11, for the
5 reasons set forth in the General Factual Allegations and Class Allegations sections of this
6 Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium
7 pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in
8 accordance with California Labor Code §§ 226.7 and 512.

9 42. As a result, Defendants are responsible for paying premium compensation for meal
10 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
11 pursuant to Labor Code §§ 226.7, 512, and 558, applicable Wage Order, and Code of Civil
12 Procedure § 1021.5.

13 **FOURTH CAUSE OF ACTION**

14 **Rest Period Violations**

15 **(Labor Code sections 226.7; 8 CCR section 11070 (12))**

16 **(Subclasses (a) – (e), (h), Against All Defendants)**

17 43. Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above
18 paragraphs of this complaint as if fully alleged herein.

19 44. Wage Order 8, § 12 and Labor Code §§ 226.7, 516 and 558 establish the right of
20 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
21 period worked, or major fraction thereof. Further, Labor Code § 226.2 requires employees who
22 are compensated on a piece-rate basis to be separately compensated for rest periods.

23 45. As alleged herein, and due to Defendants' unlawful rest period policies and/or
24 practices, Defendants did not authorize and permit members of the Rest Period Class to take the
25 paid rest periods to which they were legally entitled. Despite Defendants' violations, Defendants
26 have not paid an additional hour of pay to Plaintiff and members of the Rest Period Class at their
27 respective regular rates of pay for each violation in accordance with Labor Code § 226.7.

28 46. The foregoing policies and practices are unlawful and create an entitlement to

1 recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount
2 of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
3 costs of suit according to Labor Code §§ 226.7, 516, and 558, applicable Wage Order, and Code
4 of Civil Procedure § 1021.5.

5 **FIFTH CAUSE OF ACTION**

6 **Failure to Reimburse Necessary Business Expenses**

7 **(Labor Code section 2802)**

8 **(Subclasses (g)-(h) Against All Defendants)**

9 47. Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above
10 paragraphs of this complaint as if fully alleged herein.

11 48. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
12 states that “an employer shall indemnify his or her employees for all necessary expenditures or
13 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
14 his or obedience to the directions of the employer.”

15 49. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
16 states that “any contract or agreement, express or implied, made by any employee to waive the
17 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
18 employee or his personal representative of any right or remedy to which he is entitled under the
19 laws of this State.”

20 50. As alleged herein, due to Defendants’ unlawful reimbursement practices,
21 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
22 necessary business expenses incurred, including, among other things, the costs for corresponding
23 and communicating with Defendants’ customers and clients on employees’ personal electronic
24 devices.

25 51. As a proximate result of Defendants’ policies and/or practices in violation of Labor
26 Code §§ 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to
27 damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to
28 proof at trial, pursuant to Labor Code § 2802.

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Pay Wages of Terminated or Resigned Employees**

3 **(Labor Code section 203)**

4 **(Subclass (f), (h), Against All Defendants)**

5 52. The Plaintiff and Plaintiff Class re-allege and incorporate by reference all the
6 above paragraphs of this complaint as if fully alleged herein.

7 53. Plaintiff and the Plaintiff Class were required to work off the clock, and as a result
8 were not compensated for all hours worked. Further, Defendant failed to pay to Plaintiff and
9 Plaintiff Class wages in the form of meal and rest period premiums for legally non-compliant
10 meal and rest periods. Defendants refused and/or failed to promptly compensate Plaintiff and
11 members of the Waiting Time Class wages owed as a result of Defendant's failure to pay overtime
12 and minimum wages for the work performed by Plaintiff and Plaintiff Class off the clock, and
13 failure to provide legally compliant meal and rest periods.

14 54. Plaintiff and/or the members of the Waiting Time Class who ended their
15 employment with the Defendants during the Class Period, were entitled to be promptly paid for
16 all hours worked, lawful overtime compensation and other premiums, as required by Labor Code
17 §§ 201-203. Defendants refused and/or failed to promptly compensate Plaintiff and members of
18 the Waiting Time Class all wages owed at the time their employment with Defendants ended.
19 Pursuant to Labor Code § 203, Plaintiff and members of the Waiting Time Class now seek the
20 payment of penalties pursuant to Labor Code § 203, and prejudgment interest, according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **Failure to Issue Accurate Itemized Wage Statements**

23 **(Labor Code section 226)**

24 **(Subclasses (a) – (f), (h), Against all Defendants)**

25 55. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
26 set forth herein, the above paragraphs as if fully alleged herein.

27 56. Labor Code §§ 226, 226.3, 1174 and 1174.5 and applicable IWC Wage Order
28 provides that employers must keep records and provide employees with itemized wage statements

1 showing total hours worked and each applicable rate of pay in effect during the pay period with
2 the corresponding number of hours worked at each hourly rate.

3 57. Labor Code § 226, subdivision (a), requires an employer provide employees-either
4 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
5 when wages are paid by personal check or cash-an accurate itemized wage statement in writing
6 showing: "(1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4)
7 net wages, (5) the inclusive dates of the period for which the employee is paid, (6) the name of
8 the employee and only the last four digits of his or her social security number or an employee
9 identification number other than a social security number, (7) the name and address of the legal
10 entity that is the employer, and (8) all applicable hourly rates in effect during the pay period and
11 corresponding number of hours worked at each hourly rate by the employee"

12 58. Labor Code § 226.2, subdivision (a)(2), requires the itemized statements required
13 by subdivision (a) of § 226 shall, in addition to the other items specified in that subdivision, state
14 the following: total hours of compensable rest and recovery periods, the rate of compensation,
15 and the gross wages paid for those periods during the pay period.

16 59. Defendants willfully violated Labor Code § 226, subdivision (a) by failing to
17 provide Plaintiff and members of the Wage Statement Class with wage statements that accurately
18 reflect the total hours worked, the rate of pay for each hour worked, and net and gross wages
19 earned.

20 60. Labor Code § 226, subdivision (a) states that, "every employer shall, semimonthly
21 or at the time of each payment of wages, furnish each of his or her employees, either as a
22 detachable part of the check, draft, or voucher paying the employee's wages, or separately when
23 wages are paid by personal check or cash, an accurate itemized statement in writing."

24 61. paragraph 7(a) of the applicable Wage Order requires that every employer shall
25 keep accurate information with respect to each employee, including time records showing when
26 each employee begins and ends each work period, the total daily hours worked by each employee
27 and the total hours worked in each payroll period, applicable rates of pay, and net and gross wages
28 earned.

1 62. Plaintiff is informed and believes that Defendants willfully and intentionally failed
2 to make and/or keep records which accurately reflect the actual hours worked by Plaintiff and
3 members of the Wage Statement Class. Specifically, Plaintiff believes that Defendants' records
4 do not accurately reflect all hours worked where Plaintiff and Plaintiff Class were required to
5 work "off the clock" beyond the scheduled end of their shift, the accurate rate of pay for each
6 hour worked, and net and gross wages earned.

7 63. Plaintiff is informed and believes that Defendants' failure to keep accurate payroll
8 records, as described above, violated Labor Code § 1174, subdivision (d) and the applicable wage
9 order. Plaintiff and members of the Wage Statement Class are entitled to penalties of one hundred
10 dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) for each subsequent
11 violation for every pay period during which these records and information was not kept by
12 Defendants.

13 64. An employee suffering injury as a result of a knowing and intentional failure by
14 an employer to comply with Labor Code § 1174, subdivision (a) is entitled to recover the greater
15 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
16 and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period,
17 not to exceed an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an
18 award of costs and reasonable attorney's fees.

19 65. Plaintiff is informed and believes that Defendants' failure to keep and maintain
20 accurate records and information, as described above, were willful, and Plaintiff and member of
21 the Wage Statement Class are entitled to a statutory penalty of five hundred dollars (\$500.00) for
22 Plaintiff and each member of the Wage Statement Class pursuant to Labor Code § 1174.5.

23 **EIGHTH CAUSE OF ACTION**

24 **Unfair Competition**

25 **(Business & Professions code section 17200 et seq)**

26 **(Plaintiff and Plaintiff Class Against all Defendants)**

27 66. Plaintiff and Plaintiff Class re-allege and incorporate by reference all the above
28 paragraphs of this complaint as if fully alleged herein.

1 67. California Business and Professions Code §§ 17200 et seq. (also referred to herein
2 as the “Unfair Business Practices Act” or “Unfair Competition Law”) prohibits unfair competition
3 in the form of any unlawful, unfair or fraudulent business act or practice.

4 68. California Business and Professions Code § 17204 allows “any person who has
5 suffered injury in fact and has lost money or property as a result of such unfair competition” to
6 prosecute a civil action for violation of the UCL.

7 69. Labor Code § 90.5, subdivision (a) states it is the public policy of California to
8 vigorously enforce minimum labor standards in order to ensure employees are not required to
9 work under substandard and unlawful conditions, and to protect employers who comply with the
10 law from those who attempt to gain competitive advantage at the expense of their workers by
11 failing to comply with minimum labor standards.

12 70. Beginning at an exact date unknown to Plaintiff, but at least since the date four
13 years prior to the filing of this suit, Defendants have committed acts of unfair competition as
14 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
15 business practices and acts described in this complaint including but not limited to violations of
16 Labor Code sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 515, 1174, 1194, and 2802; as
17 well as other statutes.

18 71. The violations of these laws and regulations, as well as of the fundamental
19 California public policies protecting workers, serve as unlawful predicate acts and practices for
20 purposes of Business and Professions Code §§ 17200 et seq.

21 72. The acts and practices described above constitute unfair, unlawful, and fraudulent
22 Business Practices, and unfair competition, within the meaning of Business and Professions Code
23 §§ 17200 et seq. Among other things, the acts and practices have forced Plaintiff and Plaintiff
24 Class to labor for many hours in a row without receiving overtime compensation, to which they
25 are entitled by law, while enabling Defendants to gain an unfair competitive advantage over law-
26 abiding employers and competitors.

27 73. As a result of Defendants’ acts, Plaintiff and Plaintiff Class have suffered injury
28 in fact in being denied their statutorily entitled wages for hours of labor. As a result of Defendants’

1 unlawful acts of unfair competition, Plaintiff and Plaintiff Class have lost money and property in
2 the form of loss of wages in an amount to be proven at trial.

3 74. As a result of Defendants' acts, Plaintiff and Plaintiff Class have suffered injury
4 in fact in being denied reimbursement for necessary job-related expenditures incurred during the
5 performance of their job duties. As a result of Defendants' unlawful acts of unfair competition,
6 Plaintiff and Plaintiff Class have lost money and property in the form of unreimbursed
7 expenditures in an amount to be proven at trial.

8 75. Business and Professions Code §§ 17203 provides that a court may make such
9 orders or judgments as may be necessary to prevent the use or employment by any person of any
10 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
11 prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
12 business practices alleged above.

13 76. Business and Professions Code §§ 17203 provides that the Court may restore to
14 any person in interest any money or property that may have been acquired by means of such unfair
15 competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to Business and
16 Professions Code § 17203 for wages and payments unlawfully withheld from employees,
17 including the fair value of the hours worked, and unreimbursed expenses incurred during the four-
18 year period prior to the filing of this complaint.

19 77. Business and Professions Code § 17202 provides: "Notwithstanding Section 3369
20 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture,
21 or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce
22 all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code §
23 17202.

24 78. Plaintiff's success in this action will enforce important rights affecting the public
25 interest, and, in that regard, Plaintiff sues on behalf of the general public as well as herself and
26 others similarly situated. Plaintiff and Plaintiff Class seek and are entitled to restitution, civil
27 penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

28 79. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.

1 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
2 public right, and it would be against the interests of justice to penalize Plaintiff by forcing them
3 to pay attorneys' fees from the recovery in this action pursuant to Code of Civil Procedure §
4 1021.5 and otherwise.

5 **NINTH CAUSE OF ACTION**

6 **Civil Penalties Under the Private Attorneys General Act ("PAGA")**

7 **(Labor Code section 2698 et seq)**

8 **(Plaintiff and Aggrieved Employees Against All Defendants)**

9 80. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in all preceding paragraphs.

11 81. At all times herein mentioned, Defendants were subject to the Labor Code of the
12 State of California and the applicable Industrial Welfare Commission Orders.

13 82. "Aggrieved Employees" as defined herein means all employees of Defendants,
14 regardless of exempt/nonexempt classification, who were employed by Defendants during the
15 relevant time frame of September 22, 2020 through to the present, and who were subject to the
16 same wage and hour policies of Defendants as Plaintiff, and thereby suffered some or all of the
17 violations as Plaintiff, as set forth herein.

18 83. Labor Code § 2699(a) specifically provides for a private right of action to recover
19 penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any
20 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
21 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
22 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
23 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
24 or former employees pursuant to the procedures specified in Section 2699.3."

25 84. Plaintiff has exhausted her administrative remedies pursuant to California Labor
26 Code § 2699.3.

27 85. Accordingly, Plaintiff may commence a civil action to recover penalties under
28 Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this

1 Complaint. These penalties include, but are not limited to, penalties under California Labor Code
2 §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

3 86. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
4 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
5 employing labor who willfully fails to maintain accurate and complete records required by
6 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
7 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
8 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
9 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
10 hours worked in the payroll period and applicable rates of pay.

11 87. During the time period of employment for Plaintiff and other aggrieved
12 employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by
13 failing to maintain accurate records showing meal periods, and accurate records showing when
14 employees begin and end each work period. Defendants' failure to provide and maintain records
15 required by the Labor Code IWC Wage Orders deprived Plaintiff and other aggrieved employees
16 the ability to know, understand and question the accuracy and frequency of meal periods, and the
17 accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and other
18 aggrieved employees had no way to dispute the resulting failure to pay wages, all of which
19 resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff other
20 aggrieved employees have suffered and continue to suffer, substantial losses related to the use and
21 enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking
22 to compel Defendants to fully perform its obligation under state law, all to their respective damage
23 in amounts according to proof at trial. Because of Defendants' knowing failure to comply with
24 the Labor Code and applicable IWC Wage Orders, Plaintiff and other aggrieved employees have
25 also suffered an injury in that they were prevented from knowing, understanding, and disputing
26 the wage payments paid to them.

27 88. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
28 of civil penalties on behalf of herself, the State of California, and similarly aggrieved employees

of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

89. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

90. By this complaint, Plaintiff brings this case as a representative action seeking penalties for herself, other aggrieved employees, and the State of California in a representative capacity, as provided by the PAGA, Labor Code §§ 2698 et seq. Plaintiff is an aggrieved employee who was employed by Defendants and subject to at least one of the Labor Code violations set forth in Labor Code § 2699.5. Plaintiff specifically alleged the following in her notice to the LWDA and Defendants: violation of Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

91. Under Labor Code § 2699.3, subdivision (a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

92. Prior to filing this complaint, on September 22, 2021 and January 13, 2022, Plaintiff gave written notice of the specific provisions alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code § 2699.3. The written notice was given via certified mail to Defendants, and the LWDA by electronically filing the notice via the Department of Industrial Relations website. Plaintiff was given an LWDA case number of LWDA-CM-845606-21. A true and correct copy of Plaintiff's notices to the LWDA and Defendant(s), dated September 22, 2021 and January 13, 2022, are attached hereto as Exhibits A and B.

93. The LWDA has not provided Plaintiff with any notice that it intends to investigate the violations as alleged in Plaintiff's PAGA notice.

94. More than 65 calendar days have elapsed since the postmark date on the notice.

95. Labor Code §§ 2698-2699.5, in relevant part provides, "any provision of this code

1 that provides for a civil penalty to be assessed and collected by the Labor and Workforce
2 Development Agency...for a violation of this code, may, as an alternative, be recovered through
3 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
4 or former employees pursuant to the procedures specified in Section 2699.3.”

5 96. As an aggrieved employee, Plaintiff brings this civil action to recover civil
6 penalties for Defendants’ Labor Code violations.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, the Plaintiff prays for judgment for herself and for all others on whose
9 behalf this suit is brought against Defendants, as follows:

- 10 1. For an order certifying the proposed Class or subclasses;
- 11 2. For an order appointing Plaintiff as representative of the proposed Class or
12 subclasses;
- 13 3. For an order appointing counsel for Plaintiff as counsel for the proposed Class or
14 subclasses;
- 15 4. For compensatory, consequential, general, and special damages according to
16 proof;
- 17 5. For payment of owed overtime wages, minimum wages, liquidated damages, and
18 statutory penalties owed according to proof;
- 19 6. For prejudgment interest on all owed and unpaid wages and compensatory
20 damages;
- 21 7. For reimbursement of necessary expenditures;
- 22 8. For waiting time statutory amounts under Labor Code section 203;
- 23 9. For the equitable, injunctive and declaratory relief requested;
- 24 10. For disgorgement of profits;
- 25 11. Restitution;
- 26 12. For civil penalties pursuant to Labor Code section 2698 et seq
- 27 13. For reasonable attorney’s fees and costs; and

28 ///

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

Dated: April 14, 2022

WORK LAWYERS, PC

By:

Justin Lo, Esq.

Edward Kim, Esq.

May To, Esq.

Attorney for Plaintiff LIEN SAM HO

and on behalf of all employees similarly situated.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: April 14, 2022

By: Justin Lo
Justin Lo, Esq.

Edward Kim, Esq.

Attorney for Plaintiff LIEN SAM HO

and on behalf of all employees similarly situated.