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Superior Court of California,
County of Alameda

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ANGELA MATEO,

Plaintiff,

v.

DBA A+ BURGER, KYUNGHWA CHUNG
an individual, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **22CV011013**

COMPLAINT FOR DAMAGES

1. Failure to Pay all Wages;
2. Failure to Provide Meal Periods;
3. Failure to Provide Rest Breaks;
4. Waiting Time Penalties in Violation of Lab. Code §§ 201 and 203;
5. Failure to Reimburse for Necessary Business Expenditures;
6. Failure to Furnish Accurate and Itemized Wage Statements in Violation of Lab. Code § 226;
7. Unfair Business Practices in Violation of Bus. & Prof. Code § 17200; and
8. Violation of Private Attorneys General Act (PAGA).

DEMAND FOR JURY TRIAL

1 Plaintiff ANGELA MATEO (“Plaintiff” or “Ms. Mateo”), who hereby respectfully
2 alleges, avers, and complains as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this action against her former employer, DBA A+ BURGER, a sole
5 proprietorship, and KYUNGHWA CHUNG, an individual, (collectively referred to herein as
6 “Defendants”); and DOES 1 through 50, inclusive, for damages arising out of Defendants’
7 violations of the California Labor Code, the California Government Code, and California public
8 policy. Specifically, Plaintiff sues for: (1) failure to pay all wages, including minimum wages,
9 overtime wages, and double time; (2) failure to provide meal periods or compensation in lieu
10 thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to pay all
11 wages at the time of termination; (5) failure to provide accurate itemized wage statements upon
12 payment of wages; (6) failure to reimburse for necessary business expenditures; and (7) unfair
13 business practices. Plaintiff further seeks civil penalties in connection with Defendants’ Labor
14 Code violations based on Labor Code section 2698 et seq., the Private Attorneys General Act of
15 2004 (“PAGA”).

16 2. This is also a representative action pursuant to Labor Code section 2698 et seq.,
17 known as the Private Attorneys General Act of 2004 (“PAGA”), brought by Plaintiff on behalf of
18 herself and on behalf of all “Aggrieved Employee(s).” “Aggrieved Employee(s)” is defined as
19 non-exempt hourly-paid employees throughout California employed by Defendants during the
20 PAGA Period. The “PAGA Period” is defined as one year prior to the filing of Plaintiff’s notice
21 of Labor Code violations with the Labor Workforce and Development Agency (“LWDA”) and
22 certified mailing of said notice to Defendants, up to the resolution of the action. Plaintiff reserves
23 the right to amend this complaint to reflect a different PAGA Period or modify the definition of
24 Aggrieved Employees as further discovery is conducted.

25 3. Plaintiff, on behalf of herself and all Aggrieved Employees, seeks penalties
26 pursuant to PAGA in connection with Defendants’ Labor Code violations including one or more
27 of the following: (1) failure to pay all wages due, minimum wages, overtime wages, and double
28 time; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide

1 rest periods or compensation in lieu thereof; (4) failure to provide accurate itemized wage
2 statements; (5) failure to pay all wages due upon separation of employment to terminated or
3 resigned employees; and (6) failure to reimburse for necessary expenditures.

4 4. At all relevant times herein, Defendants consistently maintained and enforced
5 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: (a)
6 willfully refusing to pay for all hours worked, including minimum, regular, and overtime wages;
7 (b) failing to provide meal and/or rest periods, or compensation in lieu thereof; (c) willfully
8 refusing to pay wages due and owing upon separation of employment; (d) willfully refusing to
9 furnish accurate itemized wage statements upon payment of wages; and (e) willfully failing to
10 reimburse business expenses.

11 **PARTIES**

12 **The Plaintiff**

13 5. Plaintiff is, and at all times herein mentioned was, a resident of the County of
14 Alameda, in the State of California. Plaintiff was employed by Defendants from in or around
15 March 2019 through on or around August 8, 2021 (the “Relevant Employment Period”), as a non-
16 exempt hourly employee.

17 **The Defendants**

18 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant, DBA
19 A+ BURGER, is a sole proprietorship and was Plaintiff’s former employer during the Relevant
20 Employment Period. During the Relevant Employment Period, Defendant had at least five (5)
21 employees. On information and belief, Defendant’s principal place of business is located at 6228
22 Telegraph Ave, Oakland, CA 94609. Defendant DBA A+ BURGER conducted a its business in
23 the County of Alameda and Plaintiff contends Labor Code violations occurred in the County of
24 Alameda, and based thereon, Plaintiff alleges that Defendant is conducting business in good
25 standing in the County of Alameda and the state of California.

26 7. Plaintiff is informed and believes, and based thereon alleges, that KYUNGHWA
27 CHUNG, an individual (“Ms. Chung”) is an individual, and is the owner, agent, servant and
28 employee of DBA A+ BURGER, during the relevant employment period.

1 8. Plaintiff is not aware of the true names and/or capacities of those entities or
2 individuals sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by
3 their fictitious names. Plaintiff is informed and believes, and based thereon alleges, that the
4 fictitiously named Defendants were the agents, servants, and employees of each of the named
5 Defendants and, in doing the acts and things alleged, were at all times acting within the course
6 and scope of that agency, servitude, and employment and with the permission, consent, and
7 approval, or subsequent ratification, of each of the named Defendants. Reference to “Defendants”
8 includes the named Defendant and the DOE Defendants. Plaintiff will seek leave of this court to
9 amend this Complaint to insert their true names and/or capacities when the same are ascertained.

10 9. Plaintiff is informed and believes, and based thereon alleges, that at all material
11 times, each of the Defendants was the agent and/or employee of each of the remaining Defendants,
12 and each of them was at all material times acting within the purpose and scope of such agency
13 and employment.

14 10. Plaintiff is informed and believes, and based thereon alleges, that at all material
15 times, one or more of each named and/or unnamed Defendants was in some fashion, by contract
16 or otherwise, the predecessors, affiliates, alter egos, assigns, joint venturers, co-venturers or
17 partners of one or more of the remaining named and/or unnamed Defendants, and as hereinafter
18 alleged, was acting within that capacity.

19 11. Plaintiff is further informed and believes, and on that basis alleges, that one or
20 more of the remaining named and/or unnamed Defendants are the successors of one or more of
21 the remaining named and/or unnamed Defendants. Such successors are liable for the occurrences,
22 damages and injuries alleged herein to the same extent its predecessors are liable for the alleged
23 occurrences, damages and injuries.

24 12. Plaintiff alleges that Defendants acted as the employers and/or joint employers of
25 Plaintiff, and that they shared control of Plaintiff as an employee, either directly or indirectly.
26 This control included, but was not limited to, the authority to hire and fire, assign work tasks,
27 engage in day-to day supervision of employees, and control over employee records.

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13. Plaintiff alleges that Defendants were the alter-egos of one or more of the remaining named and/or unnamed Defendants, and as hereinafter alleged, was acting for their own benefit and/or the benefit of one or more of the remaining named and/or unnamed Defendants. Plaintiff alleges that Defendants were acting on behalf of each other in the establishment of, ratification of, and/or execution of the illegal practices and policies as set forth in this pleading. Plaintiff is further informed and believes, and thereon alleges, that all times relevant hereto, Defendants had decision-making responsibility for, and establishment and execution of, illegal practices and policies for each other and are, therefore, liable on the causes of action herein.

JURISDICTION AND VENUE

14. Jurisdiction is proper in this Court by virtue of the California statutes, decisional law and regulations, because the acts that give rise to the causes of action alleged herein occurred in the County of Alameda, State of California. Plaintiff hereby designates the County of Alameda, California as the proper venue.

15. Venue is proper in this Court because Defendants do substantial business in the County of Alameda, California, employed Plaintiff in the County of Alameda, California, and a substantial part of the harm occurred in the County of Alameda, California.

ADMINISTRATIVE PREREQUISITE

16. Prior to filing this complaint, Plaintiff gave written notice by electronic filing to the Labor Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-CM-864260-22), on January 21, 2022, and by certified mail to Defendants 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.

17. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated January 21, 2022, is attached hereto as "Exhibit A". As of the filing of this complaint, the LWDA has not responded.

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

6 19. More than sixty-five (65) days have passed since Plaintiff submitted her January
7 21, 2022, notice to the LWDA and Defendants of the specific alleged Labor Code violations and
8 the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
9 Plaintiff further has received no notice of Defendants’ intent to cure any of the alleged violations.
10 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
11 to her January 21, 2022 PAGA notice.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 20. Plaintiff began working for Defendants as a Kitchen Supervisor in or around
14 March 2019 and continued through on or around August 8, 2021. During her employment with
15 Defendants, Plaintiff worked as a non-exempt hourly employee. Plaintiff’s job duties included
16 overseeing and assisting in kitchen, ordering inventory, purchasing inventory, and preparing food.

17 21. Plaintiff worked twelve (12) hour shifts, six (6) days per week. Defendants
18 required Plaintiff work shifts in excess of eight (8) hours per day or forty (40) hours per week,
19 but was not paid overtime. Plaintiff regularly worked “off the clock” to attend to the needs of the
20 restaurant. Additionally, Defendants implemented a rounding policy which resulted in Plaintiff
21 not being properly compensated for all hours worked. Accordingly, Defendants failed to
22 compensate Plaintiff at least minimum wage and overtime wage and double time wage for all
23 hours worked and or all hours she was subject to Defendants’ control.

24 22. In addition, during her employment, Plaintiff did not receive meal and rest
25 periods. Defendants refused and/or failed to provide meal and rest periods. Defendants
26 understaffed employees at its restaurant wherein Plaintiff was not afforded an opportunity to take
27 uninterrupted meal and rest breaks. Defendants further required Plaintiff to prioritize continuing
28 to perform work duties ahead of taking legally compliant meal and rest periods. Defendants

1 failed to pay any premium pay to Plaintiff for her missed, late or interrupted meal and rest
2 periods.

3 23. Defendants to provide Plaintiff with legally compliant wage statements.
4 Specifically, Plaintiff was regularly paid via personal checks and in cash. Further, Defendants
5 failed to timely pay all wages owed at time of separation from employment.

6 24. Further, Plaintiff was not reimbursed by Defendants for necessary expenditures
7 as a direct consequence of the discharge of her duties. Specifically, Defendants required Plaintiff
8 to use her personal cell phones and was obligated to drive her personal vehicle to pick up
9 inventory. Defendants failed to reimburse Plaintiff for the use of her personal cell phone and
10 vehicle.

11 **FIRST CAUSE OF ACTION**

12 **Failure to Pay All Wages**

13 **(Plaintiff against All Defendants)**

14 25. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
15 complaint as though fully set forth herein.

16 26. Defendants has violated provisions of the Labor Code by failing to pay Plaintiff
17 minimum wage as required by Labor Code sections 1182.12, 1197, and the applicable Wage
18 Order.

19 27. At all times relevant herein, sections 510, 558, 1194, and 1198 of the Labor Code
20 and the applicable regulations provide for payment of overtime wages equal to one (1) and one-
21 half (1/2) times the employee's regular rate of pay for all hours worked over eight (8) in a
22 workday, and/or forty (40) in a workweek, and for payment of double time wages equal to double
23 the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any
24 workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) day of work
25 in any one (1) workweek.

26 28. Pursuant to IWC Wage Order 5, section 2(k), "hours worked" includes the time
27 during which an employee is subject to the control of the employer, and includes all time the
28 employee is suffered or permitted to work, whether or not required to do so.

1 29. Labor Code section 1194 provides that, notwithstanding any agreement to work
2 for a lesser wage, an employee receiving less than the legal minimum wage or an employee who
3 has not been paid overtime compensation as required by Labor Code section 1198 and Title 8 of
4 the Code of Regulations, section 11040, may recover, in a civil action, the unpaid balance of the
5 full amount of such minimum wage and overtime compensation, including interest thereon,
6 together with reasonable attorneys' fees and costs of suit.

7 30. During her employment with Defendants, Plaintiff was regularly required to work
8 in excess of eight (8) hours per workday and/or in excess of forty (40) hours per workweek,
9 without payment of overtime wages, minimum wages, and/or double time wages for such excess
10 hours.

11 31. Plaintiff was routinely required to work off-the-clock in order to pick-up supplies
12 for Defendants. Defendants' failure to pay Plaintiff minimum wages and or overtime wages for
13 these hours, as described herein, is a violation of California law.

14 32. The duty to pay overtime compensation imposed by California law expresses a
15 fundamental state policy affecting the health and welfare of its citizens. Defendants' failure to
16 compensate Plaintiff at the applicable overtime rates and/or minimum wage rate for all hours
17 worked was a breach of the duties Defendants owed to Plaintiff in violation of fundamental public
18 policy.

19 33. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of
20 minimum wages and/or overtime wages in amounts to be determined at trial, and is entitled to
21 recovery of such amounts, liquidated damages, plus interest and statutory penalties thereon, and
22 attorneys' fees and costs under Labor Code section 1194.

23 **SECOND CAUSE OF ACTION**

24 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

25 **(Plaintiff Against All Defendants)**

26 34. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
27 complaint as though fully set forth herein.

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1 35. Labor Code sections 226.7 and 512 provide that no employer shall employ any
2 person for a work period of more than six (6) hours without providing a meal period of not less
3 than thirty (30) minutes within the fifth (5th) hour of work, or employ any person for a work period
4 of more than ten (10) hours without a second (2nd) meal period of not less than thirty (30) minutes.

5 36. Labor Code section 226.7 provides that if an employer fails to provide an
6 employee a meal period in accordance with this section, the employer shall pay the employee one
7 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
8 period is not provided in accordance with this section.

9 37. Defendants failed to provide Plaintiff with duty-free, uninterrupted meal periods
10 within the first five (5) hours of her work shifts. Defendants maintains a practice of obligating
11 employees, including Plaintiff, to prioritize attending to patrons, preparing orders, and other
12 duties over timely uninterrupted meal periods.

13 38. As a result of Defendants' meal break policies and practices it failed to provide
14 Plaintiff with lawfully compliant meal periods. Defendants' have intentionally and improperly
15 denied meal periods to Plaintiff in violation of Labor Code sections 226.7 and 512.

16 39. Defendants further failed to implement a policy to pay Plaintiff an additional hour
17 of pay at her regular rate of pay for meal periods not provided.

18 40. At all times relevant hereto, Plaintiff worked more than six (6) hours in a workday.

19 41. Plaintiff regularly worked twelve (12) hours a day without being provided with a
20 second (2nd) meal break.

21 42. Plaintiff seeks recovery of meal period compensation pursuant to Labor Code
22 section 226.7, as well as the assessment of any statutory penalties against Defendants, and each
23 of them, in a sum as provided by the Labor Code and/or other statutes, reasonable attorneys' fees
24 and costs.

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1 51. Under Labor Code sections 201, 202, and 203, Plaintiff is entitled to prompt
2 payment of all wages due to her upon her separation from employment with Defendants.

3 52. In or around March 2020, Plaintiff was terminated from her employment with
4 Defendants. Defendants, however, failed to pay Plaintiff all wages, which were due to her
5 immediately upon termination as required by Labor Code section 202(a). Defendants failed to
6 pay Plaintiff all meal and rest break premiums, minimum wages, overtime wages, and/or double
7 time wages due that were earned throughout her employment. Defendants failed to pay Plaintiff
8 all wages which she was due throughout her employment for time spent working off-the-clock
9 and during meal and rest periods.

10 53. As a result of Defendants failure to comply with Labor Code sections 201, 202,
11 and 203, Plaintiff is entitled to waiting time penalties for not having been paid all wages due to
12 her upon her separation from employment with Defendants. As such, Plaintiff seeks payment of
13 penalties pursuant to Labor Code section 203, according to proof.

14 54. Additionally, Plaintiff is entitled to attorneys' fees and costs, pursuant to Labor
15 Code section 203 and prejudgment interest pursuant to Labor Code section 218.6 and Civil Code
16 section 3287.

17 **FIFTH CAUSE OF ACTION**

18 **Failure to Reimburse for Necessary Expenditures**

19 **(Plaintiff against All Defendants)**

20 55. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
21 complaint as though fully set forth herein,

22 56. California Labor Code section 2802, states "An employer shall indemnify his or
23 her employee for all necessary expenditures or losses incurred by the employee in direct
24 consequence of the discharge of his or her duties...."

25 57. Plaintiff was not reimbursed by Defendants for necessary expenditures as a direct
26 consequence of the discharge of her duties.

27 58. Defendants knowingly, willingly and intentionally attempted to offset the cost of
28 doing business on the Plaintiff. Defendants had a practice and policy of requiring Plaintiff to

1 shoulder the burden of Defendants' cost of doing business by requiring Plaintiff use her personal
2 cell phone and use her personal vehicle discharge her duties.

3 59. Defendants failed to reimburse Plaintiff for a reasonable percentage of Plaintiff's
4 cell phone bills and for mileage.

5 60. Accordingly, Plaintiff is entitled to an award of "necessary expenditures or losses"
6 in accordance with Labor Code section 2802, which shall also include all reasonable costs,
7 including, but not limited to, attorneys' fees and interest.

8 **SIXTH CAUSE OF ACTION**

9 **Failure to Provide Accurate Itemized Wage Statements**

10 **(Plaintiff against All Defendants)**

11 61. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
12 complaint as though fully set forth herein.

13 62. Labor Code section 226 requires employers furnish an itemized wage statement in
14 writing showing at least (1) gross wages earned, (2) total hours worked by the employee, (3) all
15 deductions, (4) net wages earned, (5) the dates the employee is being paid, (6) the name of the
16 employee and the last four digits of his or her Social Security Number, (7) the name and address
17 of the employer, and (8) the applicable hourly rate in effect during the pay period.

18 63. Under Labor Code section 226(e), an employer that fails to furnish accurate and
19 itemized wage statements is liable to pay damages of fifty dollars (\$50.00) for the initial pay
20 period in which the violation occurred and one hundred dollars (\$100.00) for each subsequent
21 violation, with a maximum aggregate penalty of four thousand dollars (\$4,000.00.)

22 64. Throughout Plaintiff's employment, Defendants willfully and intentionally failed
23 to make and/or keep records which accurately reflect the hours worked by Plaintiff as well as the
24 last four digits of social security number; name and address of employer; and all applicable hourly
25 rates in effect during the pay period and corresponding number of hours worked at each hourly
26 rate. Plaintiff believes that Defendants records do not accurately reflect all hours worked and or
27 under Defendant's control. This time worked was not included in the numeration of Plaintiff's
28 wage statements.

1 65. Plaintiff was injured by Defendants' failure to provide accurate and complete
2 information as required by subsections (1), (2), (3), (4), and (9) of Labor Code section 226
3 subsection(a) pursuant to Labor Code section 226 subdivisions (e)(2)(B)(i) and (iii) in that they
4 are/were not able to promptly and easily determine from the wage statements alone, without
5 significant effort and/or assistance from experts, the total hours worked, all applicable hourly
6 rates of pay with the corresponding number of hours worked, and their proper gross/net pay due.
7 Plaintiff was further injured in that Defendants' failure to pay all compensation due resulted in a
8 shortfall of deposits to their social security accounts, state and federal disability benefits and other
9 required employee and/or employer tax obligations for both State and federal purposes. Also,
10 Defendants' failure to comply with Labor Code section 226 subsection (a) hindered Plaintiff from
11 determining the amounts of wages actually owed to her without reference to other documents or
12 information, creating significant effort and cost to employees.

13 66. As a result, Defendants, jointly and severally, are liable to Plaintiff and Class
14 Members for the amounts as penalties provided by Labor Code section 226 subdivision (e) and
15 reasonable attorneys' fees and costs.

16 **SEVENTH CAUSE OF ACTION**

17 **Unfair Business Practices in Violation of California Business and Professions Code**

18 **section 17200**

19 **(Plaintiff against All Defendants)**

20 67. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
21 complaint as though fully set forth herein.

22 68. Business and Professions Code section 17200 et seq. (also referred to herein as the
23 "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition in
24 the form of any unlawful, unfair or fraudulent business act or practice.

25 69. Business and Professions Code section 17204 allows "any person who has suffered
26 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
27 a civil action for violation of the Unfair Competition Law.

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1 70. Labor Code section 90.5, subdivision (a) states it is the public policy of California
2 to vigorously enforce minimum labor standards in order to ensure employees are not required to
3 work under substandard and unlawful conditions, and to protect employers who comply with the
4 law from those who attempt to gain competitive advantage at the expense of their workers by
5 failing to comply with minimum labor standards.

6 71. During Plaintiff's employment with Defendants, Defendants were subject to
7 California's Unfair Competition Law ("UCL"), which expressly prohibits any fraudulent, unfair,
8 or unlawful business act or practice. (See Bus. & Prof. Code section 17200, et seq.)

9 72. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
10 filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the
11 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business
12 practices and acts described in this Complaint including but not limited to violations of Labor
13 Code sections 204, 1197, 1198 of the 226.7 and 512 as well as other statutes.

14 73. The violations of these laws and regulations, as well as of the fundamental
15 California public policies protecting workers, serve as unlawful predicate acts and practices for
16 purposes of Business and Professions Code section 17200 et seq.

17 74. The acts and practices described above constitute unfair, unlawful, and fraudulent
18 Business Practices, and unfair competition, within the meaning of Business and Professions Code,
19 section 17200 et seq. Among other things, the acts and practices have forced Plaintiff to labor for
20 many hours off-the-clock and without receiving the meal and rest periods and/or compensation,
21 to which she is entitled by law to which Plaintiff is entitled by law, while enabling Defendants to
22 gain an unfair competitive advantage over law-abiding employers and competitors.

23 75. As a direct and proximate result of Defendants' violations, Plaintiff's rights under
24 the law were violated because Plaintiff suffered monetary losses, costs and attorney's fees.
25 Plaintiff seeks restitution in the form of unpaid wages, reimbursement of business expenses, and
26 premium wages due for meal and rest periods, with accrued interest at the maximum legal rate,
27 as well as special and general damages, together with injunctive relief to prohibit Defendants from
28 violating the regulations alleged in this complaint, as well as any and all other available remedies.

1 76. Business and Professions Code section 17203 provides that a court may make such
2 orders or judgments as may be necessary to prevent the use or employment by any person of any
3 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
4 prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
5 business practices alleged above.

6 77. Business and Professions Code section 17203 provides that the Court may restore
7 to any person in interest any money or property that may have been acquired by means of such
8 unfair competition. Plaintiff is entitled to restitution pursuant to Business and Professions Code
9 section 17203 for wages and payments unlawfully withheld, including premiums for missed meal
10 and rest periods.

11 78. Business and Professions Code section 17202 provides: “Notwithstanding section
12 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
13 forfeiture, or penal law in a case of unfair competition.” Plaintiff is entitled to enforce all
14 applicable penalty provisions of the Labor Code pursuant to Business and Professions Code
15 section 17202.

16 79. Plaintiff seeks and is entitled to restitution, civil penalties, declaratory and
17 injunctive relief, and all other equitable remedies owed to him.

18 80. Plaintiff has incurred costs and attorney’s fees in bringing this action and seeks to
19 recover those costs under sections 226 subdivision (e), 218.5, 1194 of the Labor Code, and section
20 12965 subdivision (b) of the Government Code.

21 **EIGHTH CAUSE OF ACTION**

22 **Civil Penalties under Labor Code §§ 2698 and 2899 (Private Attorneys General Act)**

23 **(Plaintiff Against All Defendants)**

24 81. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
25 complaint as though fully set forth herein.

26 82. Labor Code sections 2698 through 2699, known as the Private Attorney’s General
27 Act of 2004 (“PAGA”), provides for a civil penalty to be assessed and collected by the Labor and
28 Workforce Development Agency, or any of its departments, divisions, commissions, boards,

1 agencies or employees for a violation of the Labor Code, may be recovered through a civil action
2 by an aggrieved employee on behalf of himself or herself, and collectively on behalf of all other
3 current or former employees.

4 83. Whenever the Labor and Workforce Development Agency, or any of its
5 departments, divisions, commissions, boards agencies or employees has discretion to assess a
6 civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the
7 same limitations and conditions to assess a civil penalty.

8 84. Plaintiff and Aggrieved Employees are “aggrieved employees” as defined by
9 Labor Code section 2699 in that they are all current or former employees of Defendants, and one
10 or more of the alleged violations was committed against them.

11 85. Pursuant to PAGA, prior to filing this complaint, on January 21, 2022, Plaintiff
12 gave written notice to the LWDA, and by certified mail to Defendants, of the specified provisions
13 of the Labor Code alleged to have been violated, including the facts and theories that support the
14 alleged violation as required by Labor Code section 2699.3. (LWDA Case No. LWDA-CM-
15 864260-22.) A true and correct copy of Plaintiff’s original and amended written notices sent to
16 the LWDA, dated January 21, 2022 is attached hereto as Exhibit A.

17 86. Plaintiff asserts all of the claims in this complaint against Defendants, individually
18 and on behalf of all Aggrieved Employees, in her capacity as private attorney general, and seeks
19 all statutory penalties available under the Labor Code for each violation herein before alleged.

20 87. Pursuant to Labor Code section 2699 Plaintiff, individually and on behalf of all
21 Aggrieved Employees, request and are entitled to recover from Defendants: unpaid wages,
22 overtime compensation, rest and meal period compensation and penalties, waiting period wages
23 and penalties according to proof, penalties for failure to keep accurate payroll records, penalties
24 for failing to reimburse necessary business expenditures, interest, attorney’s fees and costs
25 pursuant to Labor Code sections 218.5, 1194, subdivision (a), and 1174, as well as all statutory
26 penalties, and attorneys’ fees against Defendants, including but not limited to:

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88. Penalties under Labor Code section 2699 in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation, and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation;

89. Penalties under Code of Regulations Title 8 section 11050 in the amount of fifty dollars (\$50.00) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation; and

90. Any and all additional penalties and sums are provided by the Labor Code and/or other statutes.

91. In addition, thereto, Plaintiff seeks and is entitled to fifty percent (50%) of all penalties obtained under Labor Code section 2699 to be allocated to the general fund, and twenty five percent (25%) of all penalties obtained to be allocated to the Labor and Workforce Development Agency, for education of employers and employees about their rights and responsibilities under the Labor Code and twenty five percent (25%) to all Aggrieved Employees.

92. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs pursuant to Labor Code sections 2699, 218.5, 226, 1174, and 1194, and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

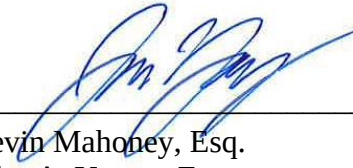
1. For compensatory damages in an amount according to proof;
2. For general damages in an amount according to proof;
3. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code section 558;
4. For declaratory relief and injunctive relief, and relief under the Bus. & Prof. Code sections 17200 et seq.
5. For punitive damages in an amount according to proof;

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3 **DEMAND FOR JURY TRIAL**

4 Plaintiff ANGELA MATEO hereby demands trial by jury on all issues so triable in the
5 complaint.

6 Dated: May 9, 2022

7 **MAHONEY LAW GROUP, APC**

8 

9 Kevin Mahoney, Esq.
10 John A. Young, Esq.
11 Tayler Pattillo, Esq.
12 Attorneys for Plaintiff Angela Mateo
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EXHIBIT A



Kevin Mahoney, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
kmahoney@mahoney-law.net

January 21, 2022

LWDA Online Submission

LABOR AND WORKFORCE DEVELOPMENT AGENCY

<http://dir.tfaforms.net/308>

VIA CERTIFIED MAIL # 7019 0700 0001 7488 9838

Return Receipt Requested

DBA A+ Burger Kyunghwa Chung Sole Prop
6228 Telegraph Ave
Oakland, CA 94609

Re: Angela Mateo v. DBA A+ Burger Kyunghwa Chung Sole Prop

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; DBA A+ Burger Kyunghwa Chung Sole Prop

From: Angela Mateo, on behalf of herself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Ms. Angela Mateo ("Ms. Mateo" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of herself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

DBA A+ Burger Kyunghwa Chung Sole Prop, (hereinafter "A+ Burger" or "Employer") is a sole proprietorship that operates a restaurant in California. Ms. Mateo began her employment with Employer in or around March 2019 until the end of her employment on or around August 8, 2021.

Ms. Mateo alleges Employer violated various sections of the Labor Code, including 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 1174, 1182.12, 1194, 1197, 1198, and 2802, by failing to pay Ms. Mateo and all other aggrieved employees all wages owed, including minimum wage, overtime, and double time, failing to provide meal and rest breaks, failing to provide accurate wage statements, maintain accurate payroll records, and failing to reimburse. Ms. Mateo and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions (some misclassified as exempt) in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Ms. Mateo and other aggrieved employees for all hours worked, in accordance with California law, including both minimum wage, overtime, and double time

Employer failed to pay Ms. Mateo and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. *Huntington Memorial Hospital v. Superior Court of Los Angeles*, 131 Cal. App. 4th 893 (2005). Employer failed to pay Ms. Mateo and other aggrieved employees overtime wages, to the extent that they worked shifts in excess of eight (8) hours per day or forty (40) hours per week. Specifically, Employer failed to compensate Ms. Mateo for work done off the clock. Employer had a policy and/or practice of rounding the hours worked by Ms. Mateo and other aggrieved employees, which systematically undercompensated Ms. Mateo and other aggrieved employees. See's *Candy Shops, Inc. v. Superior Court*, (2012) 210 Cal.App.4th 889. Ms. Mateo contends that Employer imposed on Ms. Mateo and other aggrieved employees a time "rounding policy" which was not fair and neutral and which resulted in failure to compensate employees properly for all time actually worked. Further, Ms. Mateo and other aggrieved employees were not compensated with premium pay for every compliant meal period and rest period that was not provided. Employer's failure to provide Ms. Mateo and other aggrieved employees compensation for all overtime and double time hours worked resulted in overtime and minimum wage violations.

Thus, Employer's conduct is actionable under PAGA as a violation of the Labor Code sections 227.3, 510, and 1194.

B. Employer failed to provide Ms. Mateo and other aggrieved employees with meal and rest periods, or premium compensation in lieu thereof, in accordance with California law.

Ms. Mateo alleges that she and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their work. Ms. Mateo alleges that she and other aggrieved employees routinely did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.). Ms. Mateo and other aggrieved employees, regularly did not receive meal or rest periods and were forced to skip their meal and rest periods.

When employees were prevented from taking timely and complete meal and rest periods, they did not receive premium pay as compensation for the missed meal and periods. Ms. Mateo alleges she and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not timely provided or interrupted.

Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Ms. Mateo and other aggrieved employees compliant wage statements, and failed to pay all wages earned at the time their employment ended

As a result of Employer's failure to pay all wages owed and meal and rest break premiums, as described herein, Employer further failed to keep accurate payroll records and failed to provide Ms. Mateo and other aggrieved employees with complete and accurate itemized wage statements showing the actual hours worked, premium wages earned per pay period, the accurate net and gross wage earned per pay period, the accurate rate of pay for each hour worked, and the name and address of the employer. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203 and 204, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

D. Employer Failed to Reimburse Ms. Mateo and aggrieved employees for Necessary Business Expenditures

Employer failed to reimburse Ms. Mateo and other aggrieved employees for necessary business expenses. Specifically, Employer required Ms. Mateo and other aggrieved employees were required to use their personal vehicle and personal cell phone without reimbursement. Ms. Mateo and aggrieved employees were not reimbursed by Employer for said necessary expenditures. Due to the abovementioned, Employer failed to reimburse Ms. Mateo and aggrieved employees for necessary business expenditures

E. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Mateo becomes aware of additional compensation owed or losses incurred by her or by any other aggrieved employee of the Employer, Ms. Mateo expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

LABOR AND WORKFORCE DEVELOPMENT AGENCY

January 21, 2022

Page 4 of 4

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC