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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

QAWI NTSASA,

Plaintiff,

vs.

BELLY OPERATIONS, INC.; BUDDHA'S
BELLY DEVELOPMENT COMPANY –
SOUTHERN CALIFORNIA, LP;
JONATHAN CHU; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **22STCV15864**

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **7) VIOLATION OF LABOR CODE**
) **SECTION 558;**
) **8) FAILURE TO GIVE REST BREAKS;**
) **9) FAILURE TO GIVE MEAL BREAKS**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **12) UNLAWFUL TIP COLLECTION;**
) **13) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, QAWI NTSASA (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants BELLY OPERATIONS, INC.; BUDDHA'S BELLY DEVELOPMENT COMPANY – SOUTHERN CALIFORNIA, LP; JONATHAN CHU, and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant BELLY OPERATIONS, INC. is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant BUDDHA'S BELLY DEVELOPMENT COMPANY – SOUTHERN CALIFORNIA, LP is and was a California limited partnership, doing business in Los Angeles County, California, and which employed Plaintiff.

5. Defendant JONATHAN CHU is a citizen of California based on Plaintiff's information and belief.

6. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

7. Plaintiff is informed and believes and thereon alleges that JONATHAN CHU is

1 a natural person and an owner, director, officer, and/or managing agent of Defendants BELLY
2 OPERATIONS, INC. and BUDDHA'S BELLY DEVELOPMENT COMPANY – SOUTHERN
3 CALIFORNIA, LP, including “The Independence Tavern”, who directly or indirectly, or
4 through an agent or any other person, employed or exercised control over the wages, hours, or
5 working conditions of Plaintiff and the Aggrieved Employees (as defined below). Therefore, he
6 is liable to Plaintiff and the Aggrieved Employees for his violations of, or causing Defendants to
7 violate, Labor Code sections 203, 226, 226.7, and the Wage Order (no. 5) pursuant to Labor
8 Code section 558.1.

9 8. Plaintiff is informed and believes and thereon alleges that BELLY OPERATIONS, INC.,
10 BUDDHA'S BELLY DEVELOPMENT COMPANY – SOUTHERN CALIFORNIA, LP, and
11 JONATHAN CHU are all operating “The Independence Tavern” and other restaurants in
12 California. BELLY OPERATIONS, INC., BUDDHA'S BELLY DEVELOPMENT
13 COMPANY – SOUTHERN CALIFORNIA, LP, and JONATHAN CHU hereinafter collectively
14 referred to as “Defendants” or “BELLY”.

15 9. The “Aggrieved Employees” are all current and former hourly non-exempt or hourly paid
16 employees who worked for BELLY at any and all of their California locations during the relevant
17 time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private
18 Attorneys General Act of 2004 (“PAGA”).

19 10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
20 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
21 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
22 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
23 for the conduct alleged herein. Upon discovering the true names and capacities of these
24 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
25 capacities of these fictitiously named defendants.

26 11. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
27 that information and belief, alleges that at all times herein mentioned, each of the remaining
28 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent
2 of his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 12. Plaintiff started working for BELLY, and specifically, “The Independence Tavern”, as
5 a bartender/server on or around June 18, 2021. During his employment tenure, Plaintiff was
6 classified as an hourly, non-exempt employee and earned approximately \$15.20/hour. Plaintiff’s
7 schedule was 5 days per week, from 10:30am to 4pm, however, he consistently worked until
8 4:30pm or 5:00pm on every shift. Plaintiff’s employment with BELLY ended in or around
9 January of 2022.

10 13. It is Plaintiff’s position that BELLY has violated numerous California Labor Code
11 Sections against Plaintiff and the other Aggrieved Employees who worked for BELLY at any
12 and all of their California locations during the relevant PAGA period.

13 14. BELLY did not provide Plaintiff and other similarly situated aggrieved employees with
14 the minimum wages to which they were entitled for all work performed and did not compensate
15 him and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and
16 1197.1. Plaintiff and others were not paid for all hours worked and consistently worked “off the
17 clock”. This is so because Plaintiff and others would consistently be required to perform work
18 duties after clocking out for work and were required to stay past their shifts. These tasks included
19 cleaning up, putting items away, and throwing trash away in the trash can on the way out of the
20 restaurant. Management/ownership would have Plaintiff and others clock out first and then
21 complete end of the shift tasks. Moreover, BELLY had a policy and practice of rounding down
22 hours worked and “time shaving”, which led to Plaintiff and others not being paid for all hours
23 worked, which would include the minimum wage. Moreover, to the extent employees such as
24 Plaintiff and others worked through their meal periods, they were not compensated for that time,
25 which would be akin to a minimum wage violation.

26 15. Additionally, BELLY violated Labor Code Section 351 by taking some of the tips meant
27 for employees and also deducting the tips from Plaintiff’s and others’ earned wages. BELLY
28 also deducted the credit card fee from Plaintiff’s and others’ tips and did not timely provide the
credit card and even cash tips to Plaintiff and other similarly situated aggrieved employees.

1 16. Due to the above “off the clock” violations and as a matter of company policy, BELLY
2 violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved
3 employees overtime, even though they worked more than 8 hours per day, 12 hours per day,
4 and/or 40 hours per week throughout their employment. Plaintiff’s and others’ actual work hours,
5 which included the “off the clock” work as described above, entitled them to overtime, however,
6 it was not company policy to keep accurate track of all hours worked and to pay employees all
7 due overtime.

8 17. BELLY violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
9 Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees
10 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their
11 employment. BELLY did not completely relieve Plaintiff of all duty during said rest periods.
12 BELLY did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of
13 compensation for each workday that one or more statutory rest periods was not provided. Rest
14 breaks were not authorized or enforced at the restaurant. In fact, it was not part of BELLY’s
15 culture for employees such as Plaintiff and others to take at least one 10-minute rest break every
16 day wherein they are relieved of all work duties. The latter was due to understaffing of
17 servers/bartenders and bartenders such as Plaintiff being too busy to be able to take rest breaks
18 or not being able to take rest breaks because there was no coverage at the bar. Taking rest breaks
19 meant leaving customers unattended and that could not happen.

20 18. BELLY also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
21 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
22 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
23 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
24 BELLY did not completely relieve Plaintiff of all duties during said meal periods. BELLY did
25 not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each
26 workday that one or more statutory meal periods was not provided. If BELLY had Plaintiff sign
27 a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally
28 worked more than a 6-hour shift. If BELLY had Plaintiff sign an on-duty meal period agreement
wherein Plaintiff agreed to work through his meal period, it would also be invalid and

unenforceable because the nature of Plaintiff's job as a bartender does not prevent him from taking a meal period. As such, Plaintiff and others never received statutory, timely meal periods during their employment. In other words, there was never an uninterrupted 30-minute meal period for any employees, including Plaintiff, that was taken before the 5th hour worked. As was the case with rest periods, meal breaks were definitively not part of the BELLY's culture, especially in a fast-paced restaurant environment. The meal periods were not authorized and were not enforced. Furthermore, Plaintiff was not able to take a meal period because there was no one to relieve him of his job duties as a bartender and no one to cover the bar if Plaintiff was to attempt to take any type of statutory break. The only way Plaintiff would be able to eat anything at all would be to order some food, put it in his locker, and then run back and forth taking a few bites each time.

19. Furthermore, during the relevant time period, BELLY failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. BELLY was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name and address of employing entity (as "The Independence" is not the true and correct name), the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other items. As such, BELLY did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

20. BELLY violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked including minimum wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

21. During the relevant time period, BELLY also failed to keep accurate and complete

1 payroll records showing the correct wages paid to Plaintiff and other aggrieved employees
2 pursuant to California Labor Code sections 1174(d).

3 22. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
4 business-related expenses and costs that were not reimbursed by BELLY. These costs include,
5 but are not limited to, the cost of uniforms in that Plaintiff and others were required to wear a
6 certain dress code as the aprons were the only things provided. As such, Plaintiff and others had
7 to purchase black/tan/white collared shirts, jeans (Plaintiff was told there would be a discount at
8 “Levi’s”), and black shoes. Accordingly, BELLY was in violation of California Labor Code
9 sections 2800 and 2802.

10 23. Moreover, BELLY failed to provide sick pay pursuant to Labor Code section 246 and
11 also failed to provide Worker’s Compensation coverage for Plaintiff and other aggrieved
12 employees in violation of Labor Code Section 3700.5.

13 24. In addition, BELLY failed to provide a suitable rest break area for employees such as
14 Plaintiff and others in contravention of Industrial Welfare Commission Wage Order no. 5-2001,
15 section 13(b).

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

18 **(California Industrial Welfare Commission Order 5-2001, California Code of
19 Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 25. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

23 26. At all times relevant herein, Defendants were required to compensate their employees for
24 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
25 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
26 11050.

27 27. For the three (3) years preceding filing of this action, Defendants failed to compensate
28 Plaintiff for all hours worked.

29 28. Under the aforementioned wage order and regulations, Plaintiff is to recover

1 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
2 the filing of this Complaint.

3 29. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
4 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
5 this Court.

6 30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
7 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
8 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
9 reasonable attorney's fees and costs of suit.

10 31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
12 amount known to Plaintiff once he has obtained all of his payroll records from
13 Defendants.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 **(California Labor Code Sections 1194, 1194.2, 1197)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

20 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
21 to suffer or permit a California employee to work without paying wages at the minimum wage
22 rate for all hours worked as required by the applicable Industrial Welfare Commission
23 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations,
24 Title 8, Section 11050, subdivision 4.

25 34. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, "hours
26 worked" included "the time during which an employee is subject to the control of an employer,
27 and includes all the time the employee is suffered or permitted to work, whether or not required
28 to do so..."

35. During his employment, Plaintiff was regularly required as a matter of uniform policy

1 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
2 less than the minimum wage rate by Defendants for hours worked in violation of California
3 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
4 order(s).

5 36. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
6 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
7 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
8 to believe that their acts or omissions were not contrary to California law.

9 37. For all hours worked by Plaintiff for which he was paid less than the minimum wage
10 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
11 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
12 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
13 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

14 38. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME**

19 **(California Industrial Welfare Commission Order 9-2001, California Code of
20 Regulations Title 8 Section 11050; California Labor Code Section 510)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 39. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 38, inclusive, of this Complaint as though fully set forth herein.

24 40. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
25 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
26 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
27 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
28 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

1 41. Plaintiff was a non-exempt employee entitled to the protections of the California
2 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,
3 Title 8, Section 11050.

4 42. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in
5 a single workweek on numerous occasions.

6 43. Plaintiff was entitled to the above overtime premiums.

7 44. Defendants did not pay Plaintiff premium wages of at least one and one-half times
8 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

9 45. Defendants did not pay Plaintiff premium wages of at least one and one-half times
10 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

11 46. Plaintiff worked at least one pay period in which he was not properly paid overtime
12 within the three (3) years prior to the initiation of this lawsuit.

13 47. Defendants know or should know the actual dates of overtime worked, the amount of
14 overtime worked, and the amount of unpaid overtime due.

15 48. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
16 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
17 Court.

18 49. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
19 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
20 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
21 reasonable attorney's fees and costs of suit.

22 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

27 **(California Labor Code Section 226)**

28 **(Plaintiff against all named defendants and all DOE defendants)**

51. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

2 52. Pursuant to California Labor Code Section 226, every employer must furnish each
3 employee an itemized statement of wages and deductions at the time of payment of wages.

4 53. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
5 accurately reflected all information required by Labor Code Section 226, including but not
6 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
7 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
8 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
9 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
10 California Labor Code Section 226(a).

11 54. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
12 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
14 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
15 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
the 3-year period immediately preceding the date this lawsuit was filed.

16 55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
20 and attorney's fees pursuant to statute.

21 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

26 **(California Labor Code Sections 201, 203)**

27 **(Plaintiff against all named defendants and all DOE defendants)**

28 57. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

2 58. Pursuant to California Labor Code Section 201(a), an employer who discharges an
3 employee must immediately pay for all compensation due and owing.

4 59. Pursuant to California Labor Code Section 202, when an employee resigns, the
5 employer must pay all compensation due and owing within 72 hours of resignation, or on the
6 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

7 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
8 without abatement or reduction, any wages of an employee whose employment ends, the wages
9 of the employee shall continue as a penalty from the due date at the same rate until paid or until
10 an action is commenced; however, the wages shall not continue for more than 30 days for
11 failure to pay an employee owed wages.

12 61. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
13 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
14 wages as required by Labor Code Section 203.

15 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
18 preceding the filing of this lawsuit.

19 63. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
20 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
21 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

22 64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

25 **SIXTH CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

27 **(California Labor Code Section 204)**

28 **(Plaintiff against all named defendants and all DOE defendants)**

65. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

2 66. California Labor Code Section 204 establishes the fundamental right of all employees
3 in the State of California to be paid wages in a timely fashion for their work.

4 67. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
5 full amount of all owed wages when due as required by California Labor Code Section 204.

6 68. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
7 informed, believes, and thereon alleges, that all times relevant during the liability period,
8 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
9 including overtime hours, the minimum wage, and premium pay for missed meal and rest
10 breaks.

11 69. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
12 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
13 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
14 from Defendants' records or indirectly based on information from Defendants' records.

15 70. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

18 **SEVENTH CAUSE OF ACTION**
VIOLATION OF LABOR CODE SECTION 558

19 **(California Labor Code Section 558)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 71. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

23 72. California Labor Code Section 558 states that any person acting on behalf of an
24 employer who violates, or causes to be violated, a section of this chapter or any provision
25 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
26 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in addition to an amount
28 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one

1 hundred dollars (\$100) for each underpaid employee for each pay period for which the
2 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
3 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
4 filed.

5 73. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
6 Defendants are subject to civil penalties under the following laws:

- 7 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular
8 wages, including minimum wages, and overtime wages for overtime hours worked.
9 Defendants also failed to Plaintiff premium pay for missed meal and rest breaks. As
10 such, Defendants violated Section 558 under which penalties are due. Plaintiff
11 therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each
12 subsequent violation for each pay period for which Plaintiff was underpaid in
13 addition to an amount sufficient to recover underpaid wages.
- 14 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
15 relief associated with Plaintiff's prosecution of this cause of action under California
16 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
17 paying Plaintiff for his overtime hours worked and for all hours worked (including
18 the minimum wage).
- 19 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
20 fees for relief associated with Plaintiff's prosecution of this cause of action under
21 California Labor Code Sections 200, et seq.

22 74. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
23 the statutes, regulations, and wage orders alleged in this cause of action along with any
24 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

25 75. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
26 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO GIVE REST BREAKS**

3 **(Plaintiff against all named defendants and all DOE defendants)**

4 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.

6 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 7 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
8 provides that every employer shall authorize and permit all employees to take rest
9 periods, which insofar as practicable shall be in the middle of each work period.
10 The authorized rest period time shall be based on the total hours worked daily at the
11 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 12 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
13 provides that if an employer fails to provide an employee a rest period in
14 accordance with the applicable provisions of this order, the employer shall pay the
15 employee one (1) hour of pay at employee's regular rate of compensation for each
16 workday that the rest period is not provided;
- 17 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
18 penalizes the employer \$50.00 for each initial violation, per employee, of any
19 provision of the Wage Order, and \$100.00 for each additional violation thereafter
20 per employee; and
- 21 d. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any rest period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if an employer fails to provide an
24 employee a rest period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at employee's regular rate of compensation for each work day that the rest
27 period is not provided.

28 78. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
break after every four (4) hours of work or major fraction thereof, as required by California law.

1 79. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
2 regulations, and wage orders alleged in this cause of action along with any allowable
3 interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff
4 prays for the foregoing moneys calculated from 3 years immediately preceding the filing
5 of this lawsuit.

6 80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
7 fees as well as interest under Labor Code section 218.6.

8 81. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
9 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
10 trial.

11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO GIVE MEAL BREAKS**

13 **(Plaintiff against all named defendants and all DOE defendants)**

14 82. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

16 83. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 17 a. California Labor Code section 512(a), which requires that employees be given a 30-
18 minute uninterrupted meal break after five (5) hours of work, and a second
19 uninterrupted meal break after ten (10) hours of work;
- 20 b. California Labor Code section 226.7, which states that (a) no employer shall require
21 any employee to work during any meal period mandated by an applicable order of
22 the Industrial Welfare Commission, and (b) if any employer fails to provide an
23 employee a meal period in accordance with an applicable order of the Industrial
24 Welfare Commission, the employer shall pay the employee one (1) additional hour
25 of pay at the employee's regular rate of compensation for each workday that the
26 meal period is not provided;
- 27 c. California Industrial Welfare Commission Order No. 5 sections 11(B) and 11(D), as
28 codified under Title 8 of the California Code of Regulations Section 11050, which
states that if an employer fails to provide an employee a meal period in accordance

1 with the applicable provisions of the Wage Order, the employer shall pay the
2 employee one (1) hour of pay at the employee's regular rate of compensation for
3 each workday that the meal period is not provided;

- 4 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
5 codified under Title 8 of the California Code of Regulations Section 11050, which
6 requires an employer to maintain records documenting its employees' meal periods;
- 7 e. California Industrial Welfare Commission Wage Order No. 5 Section 20(A), as
8 codified under California Code of Regulations Section 11050, which penalizes the
9 employer \$50.00 for each initial violation, per employee, of any provision of the
10 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 11 f. California Labor Code section 1171 and 1173, which have given the California
12 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
13 as enforceable law.

14 84. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
15 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
16 take a second relieved meal break after ten (10) hours of work, as required by California law.
17 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
18 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
19 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
20 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
21 duty. California Labor Code section 226.7 provides that employers may not require their
22 employees to work through their meal periods. California Labor Code section 226.7 and
23 California Code of Regulations section 11050 requires that if the employer fails to provide the
24 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
25 of pay for each work day that the meal period is not given.

26 85. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

1 86. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

3 87. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **TENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **Individual and Representative Claim for PAGA penalties under California Labor Code**
9 **sections 201, 202, 203, 204 and/or 204b, 226, 226.3, 226.7, 246, 351, 353, 510, 512, 558,**
10 **558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

11 **(Against all Defendants and all DOE Defendants)**

12 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

14 89. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
15 Defendants of the specific violations of the California Labor Code that Defendants and DOE
16 defendants have violated and continue to violate.

17 90. Pursuant to California Labor code section 2699.3, no response was received from
18 the LWDA within 65 days of the postmark date of the above-alleged letter.

19 91. Plaintiff therefore has exhausted all administrative remedies required of him under
20 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
21 cause of action and pursue penalties in a representative action for Defendants' violations of the
22 Labor Code.

23 92. Pursuant to California Labor Code section 2699, any provisions of the Labor
24 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies, or employees for violation of the code
26 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
27 behalf of himself or herself and other current or formal employees pursuant to the
28 procedures specified in California Labor Code section 2699.3.

93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged

1 violator and had one or more of the alleged violations committed against him, and therefore is
2 properly suited to represent the interests of other current and former employees, including all
3 current and former non-exempt, hourly paid employees who worked for BELLY at any of their
4 locations in the State of California during the applicable PAGA period.

5 94. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
6 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
7 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

8 95. Plaintiff therefore has exhausted all administrative remedies required of him under
9 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
10 cause of action and pursue penalties in a representative action for Defendants' violations of the
11 Labor Code.

12 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
13 Defendants for violating the Labor Code.

14 97. California Labor Code section 558 establishes a civil penalty as follows: Any
15 employer or other person action on behalf of an employer who violates, or causes to be
16 violated, a section of this chapter or any provision regulating hours and days of work in any
17 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
18 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
19 dollars (\$50) for each underpaid employee for each pay period for which the employee was
20 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
21 employee for each pay period for which the employee was underpaid ...;

22 98. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
23 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is
24 not seeking individual/victim specific relief or underpaid wages under this particular cause of
25 action.

26 99. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
27 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
28 the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,

226.3, 226.7, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699, 3700.5, and any other Labor Codes and Industrial Welfare Commission Wage Orders (no. 5) violated based on the facts alleged in this Complaint.

100. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

(Plaintiff against all Defendants and DOE Defendants, and each of them)

101. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 100, inclusive, of this Complaint as thought fully set forth herein.

102. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendants. These costs include, but are not limited to, the cost of uniforms in that Plaintiff and others were required to wear a certain dress code as the aprons were the only things provided. As such, Plaintiff and others had to purchase black/tan/white collared shirts, jeans (Plaintiff was told there would be a discount at "Levi's"), and black shoes. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees and costs, under Labor Code section 2802.

TWELFTH CAUSE OF ACTION

UNLAWFUL TIP COLLECTION

(Lab. Code §§ 351 and 353)

(Plaintiff against all named Defendants and DOE Defendants, and each of them)

104. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 103, inclusive, of this Complaint as though fully set forth herein.

1 105. During all times relevant herein, Defendants unlawfully collected tips meant for
2 employees and also deducting the tips from Plaintiff's and others' earned wages. BELLY also
3 deducted the credit card fee from Plaintiff's and others' tips and did not timely provide the
4 credit card and even cash tips to Plaintiff and other similarly situated aggrieved employees.

5 106. Labor Code section 351 makes it illegal for an employer to collect tips paid or
6 left for the employee and mandates that such tips are the employees' property.

7 107. Labor Code section 353 requires every employer to keep accurate records of all
8 gratuities received, whether received directly from the employee or indirectly by means of
9 deductions from the wages of the employee or otherwise.

10 108. By Defendants unlawfully collecting tips from Plaintiff, Defendants violated
11 California Labor Code Section 351 and 353. Therefore, Plaintiff demands return of all tips
12 unlawfully collected from him within three years of the filing of this complaint

13 **THIRTEENTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

15 **(California Business and Professions Code Section 17200)**

16 **(Plaintiff against All Defendants and all DOE defendants)**

17 109. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 108, inclusive, of this Complaint as though fully set forth herein.

19 110. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
20 constitutes unfair and unlawful business practices under California Business and Professions
21 Code Section 17200, et seq.

22 111. Defendant's violations of California labor laws and the Labor Code constitutes a
23 business practice because it was done repeatedly over a significant period of time in a
24 systematic manner that was detrimental to Plaintiff.

25 112. For the four years preceding the filing of this action, Plaintiff has suffered
26 damages and request damages and/or restitution of all monies and profits to be disgorged from
27 Defendants in an amount according to proof at time of trial, but in excess of the
28 jurisdiction of this Court.

///

1 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
2 follows:

- 3 1. For special and consequential damages to the extent allowed by law;
- 4 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
5 at trial;
- 6 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
7 subject to proof at trial;
- 8 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
9 proof at trial;
- 10 5. For restitution and disgorgement for all unfair business practices by Defendants
11 against Plaintiff in an amount subject to proof at trial;
- 12 6. For an order enjoining Defendants from further unfair and unlawful business
13 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 14 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
15 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 16 8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
17 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 18 9. For maximum civil penalties available under the Labor Code and applicable Wage
19 Order against Defendants as described more particularly in the Complaint and
20 representative PAGA claim;
- 21 10. For all remedies available to Plaintiff under the applicable Wage Order and the
22 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
23 liquidated damages, damages, penalties, and waiting time penalties according to proof
24 to the extent permitted by law;
- 25 11. For the imposition of civil penalties and/or statutory penalties;
- 26 12. For all interest as allowed by law;
- 27 13. For all costs and disbursements incurred in this suit;
- 28 14. Reasonable attorney's fees where available by law, including but not limited to,
 pursuant to the California Labor Code and/or other applicable laws; and

1 15. For such other and further relief as this Court may deem proper.

2
3 DATED: April 13, 2022

MESSRELIAN LAW INC.

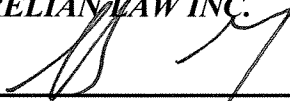
4 By 
5 Harout Messrelian, Esq.
6 Attorneys for Plaintiff Qawi Ntsasa
7

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
10

11 DATED: April 13, 2022

MESSRELIAN LAW INC.

12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Qawi Ntsasa
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