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Assigned for All Purposes
Judge Glenda Sanders
CX-101

Attorneys for Plaintiff Patcha Marion

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

PATCHA MARION,	)	CASE NO.: 30-2022-01271484-CU-OE-CXC
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES FOR:
	)	
	)	1) FAILURE TO COMPENSATE FOR
vs.	)	ALL HOURS WORKED;
	)	2) FAILURE TO PAY MINIMUM
	)	WAGES;
THAI NAKORN THE ORIGINAL, LLC;	)	3) FAILURE TO PAY OVERTIME;
VUTIPON VONGPAYUK; and	)	4) FAILURE TO PROVIDE
DOES 1 to 25, inclusive,	)	ACCURATE ITEMIZED WAGE
	)	STATEMENTS;
	)	5) FAILURE TO PAY WAGES WHEN
	)	EMPLOYMENT ENDS;
Defendants.	)	6) FAILURE TO PAY WAGES OWED
	)	EVERY PAY PERIOD;
	)	7) FAILURE TO GIVE REST BREAKS;
	)	8) FAILURE TO GIVE MEAL BREAKS
	)	9) PRIVATE ATTORNEYS GENERAL
	)	ACT (“PAGA”);
	)	10) FAILURE TO REIMBURSE FOR
	)	BUSINESS EXPENSES;
	)	11) UNLAWFUL TIP COLLECTION;
	)	12) RETALIATION IN VIOLATION OF
	)	LABOR CODE SECTION 98.6;
	)	13) RETALIATION IN VIOLATION OF
	)	LABOR CODE SECTION 1102.5;
	)	14) WRONGFUL TERMINATION IN
	)	VIOLATION OF PUBLIC POLICY;
	)	15) VIOLATION OF CALIFORNIA
	)	BUSINESS AND PROFESSIONS
	)	CODE SECTION 17200.
	)	

1)
2) **DEMAND FOR JURY TRIAL**
3)
4)
5)

6 COMES NOW Plaintiff, PATCHA MARION (hereinafter "Plaintiff"), and alleges as
7 follows:

8 **PARTIES, JURISDICTION, VENUE**

9 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
10 County of Orange in this judicial district because Defendants THAI NAKORN THE
11 ORIGINAL, LLC; VUTIPON VONGPAYUK, and DOES 1 to 25, inclusive, do business in the
12 County of Orange and because Defendants' obligations and liabilities arise therein, and because
13 the work that was performed by Plaintiff in the County of Orange is the subject of this action.
Moreover, Plaintiff's damages sought herein exceed \$25,000.

14 2. Plaintiff is a female resident of the State of California.

15 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
16 THAI NAKORN THE ORIGINAL, LLC is and was a California corporation, doing business in
17 Orange County, California, and which employed Plaintiff.

18 4. Defendant VUTIPON VONGPAYUK is a citizen of California based on Plaintiff's
19 information and belief.

20 5. In relevant part, Labor Code section 558.1 states:

21 (a) Any employer or other person acting on behalf of an employer, who
22 violates, or causes to be violated, any provision regulating minimum
23 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.

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

28 6. Plaintiff is informed and believes and thereon alleges that VUTIPON VONGPAYUK is

1 a natural person and an owner, director, officer, and/or managing agent of Defendants THAI
2 NAKORN THE ORIGINAL, LLC, who directly or indirectly, or through an agent or any other
3 person, employed or exercised control over the wages, hours, or working conditions of Plaintiff
4 and the Aggrieved Employees (as defined below). Therefore, he is liable to Plaintiff and the
5 Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code
6 sections 203, 226, 226.7, 1193.6, 1194, or 2802, and the Wage Order (no. 5) pursuant to Labor
7 Code section 558.1.

8 7. THAI NAKORN THE ORIGINAL, LLC and VUTIPON VONGPAYUK are hereinafter
9 collectively referred to as “Defendant(s)” or “THAI NAKORN”.

10 8. The “Aggrieved Employees” are all current and former hourly non-exempt or hourly paid
11 employees who worked for THAI NAKORN at any and all of their California locations during
12 the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
13 Private Attorneys General Act of 2004 (“PAGA”).

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

21 10. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
22 that information and belief, alleges that at all times herein mentioned, each of the remaining
23 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
24 under the authority of their agency, employment, or representative capacity, with the consent
25 of his/her codefendants.

26 **GENERAL ALLEGATIONS**

27 11. Plaintiff started working for THAI NAKORN as a serve in mid -2021. Her employment
28 ended in late 2021/early 2022. Plaintiff was classified as an hourly, non-exempt employee and
her rate of pay was \$13/hour.

1 12. It is Plaintiff's position that THAI NAKORN has committed numerous labor code
2 violations against Plaintiff and other hourly, non-exempt employees who worked for THAI
3 NAKORN at any of their California locations during the relevant PAGA period.

4 13. THAI NAKORN did not provide Plaintiff and other similarly situated aggrieved
5 employees with the minimum wages to which they were entitled for all work performed and
6 did not compensate her and others for all hours worked pursuant to California Labor Code
7 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
8 consistently worked "off the clock". This is so because Plaintiff and others would consistently
9 be required to perform work duties after clocking out for work. Moreover, THAI NAKORN
10 had a policy and practice of rounding down hours worked and "time shaving", which led to
11 Plaintiff and others not being paid for all hours worked, which would include the minimum
12 wage.

13 14. Additionally, THAI NAKORN violated Labor Code Section 351 by taking some of the
14 tips meant for employees and also deducting the tips from Plaintiff's and others' earned wages.
15 THAI NAKORN also deducted the credit card fee from Plaintiff's and others' tips and did not
16 timely provide the credit card and even cash tips to Plaintiff and other similarly situated
17 aggrieved employees.

18 15. Due to the above "off the clock" violations and as a matter of company policy, THAI
19 NAKORN violated Labor Code §510 because it failed to pay Plaintiff and other similarly
20 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
21 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and others'
22 actual work hours, which included the "off the clock" work as described above, entitled them to
23 overtime, however, it was not company policy to keep accurate track of all hours worked and to
24 pay employees any overtime at all. In addition, THAI NAKORN did not include bonuses and/or
25 incentive payments in calculating employees' true regular rate of pay for purposes of deciphering
26 their correct overtime rate of pay. Overtime pay was simply not allowed, no matter how many
27 hours were worked in a given day or workweek.
28

1 16. THAI NAKORN violated Labor Code § 226.7 along with Industrial Welfare
2 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
3 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
4 thereof, throughout their employment. THAI NAKORN did not completely relieve Plaintiff of
5 all duty during said rest periods. THAI NAKORN did not pay to Plaintiff one additional hour
6 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
7 rest periods was not provided. Rest breaks were not authorized or enforced at the restaurant. In
8 fact, it was not part of THAI NAKORN's culture for employees such as Plaintiff and others to
9 take at least one 10-minute rest break every day wherein they are relieved of all work duties. The
10 latter was due to understaffing of servers and overall company policy. Plaintiff did not receive a
11 single, uninterrupted, timely 10-minute rest break during her entire 8 months of employment.

12 17. THAI NAKORN also violated Labor Code §§ 512 and 226.7 along with Industrial
13 Welfare Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly
14 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
15 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
16 periods. THAI NAKORN did not completely relieve Plaintiff of all duties during said meal
17 periods. THAI NAKORN did not pay to Plaintiff one additional hour of pay at Plaintiff's regular
18 rate of compensation for each workday that one or more statutory meal periods was not provided.
19 If THAI NAKORN had Plaintiff sign a meal period waiver, it would not be valid and enforceable
20 since Plaintiff and others generally worked more than a 6-hour shift. If THAI NAKORN had
21 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through her
22 meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job as
23 a server does not prevent her from taking a meal period. As such, Plaintiff and others never
24 received statutory, timely meal periods during their employment. In other words, there was never
25 an uninterrupted 30-minute meal period for any employees, including Plaintiff, that was taken
26 before the 5th hour worked. As was the case with rest periods, meal breaks were definitively not
27 part of the THAI NAKORN's culture, especially in a fast-paced restaurant environment. The
28

1 meal periods were not authorized and were not enforced.

2 18. Furthermore, even if THAI NAKORN did in fact provide meal period penalties to
3 Plaintiff and others for late, short, interrupted, or no meal periods, that does not absolve THAI
4 NAKORN of PAGA penalties. In Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244,
5 1256, the Court stated that “section 226.7 does not give employers a lawful choice between
6 providing *either* meal and rest breaks *or* an additional hour of pay” (emphasis in original). Thus,
7 the extra hour of pay does not excuse the violation; the employer has still committed a violation
8 even if the remedy for the violation has been paid. See also Wert v. U.S. Bancorp (S.D. Cal. Mar.
9 22, 2016, 2016 WL 1110302 at *4). It is important to note that Plaintiff complained to
10 management on several occasions about not being able to take meal periods.

11 19. Furthermore, during the relevant time period, THAI NAKORN failed to pay Plaintiff and
12 other similarly situated aggrieved employees all wages due to them within any time period
13 specified by California Labor Code section 204, including the minimum wages and overtime as
14 described above as well as meal/rest break premiums. In fact, although Plaintiff and others were
15 supposed to be paid every 2 week, they were consistently paid late and received their paychecks
16 almost every 3 weeks in contravention of California law. THAI NAKORN was also in violation
17 of California Labor Code section 226(a) by not providing access to paystubs and failing to
18 include pertinent information on the wage statements, including but not limited to, all hours
19 worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments
20 for meal and rest breaks, the correct legal name and address of employing, the correct beginning
21 and end of the pay period, all applicable hourly rates, and all identifying employee information,
22 among other items. As such, THAI NAKORN did not provide Plaintiff and other similarly
23 situated aggrieved employees with complete, accurate itemized wage statements.

24 20. THAI NAKORN violated Labor Code § 203 because it willfully failed to pay Plaintiff
25 and other similarly situated aggrieved employees earned and due wages upon separation of
26 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
27 These earned but unpaid wages include compensation for all hours worked including minimum
28

1 wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

2 21. During the relevant time period, THAI NAKORN also failed to keep accurate and
3 complete payroll records showing the actual hours worked per day (including the time for meal
4 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
5 Labor Code sections 1174(d).

6 22. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
7 business-related expenses and costs that were not reimbursed by THAI NAKORN. These costs
8 include, but are not limited to, reimbursement for uniforms as well as mileage. There were many
9 occasions wherein the restaurant would run out of vegetables and Plaintiff would be asked to go
10 buy vegetables in her own personal vehicle. In these instances, Plaintiff would not be reimbursed
11 her mileage. Accordingly, THAI NAKORN was in violation of California Labor Code sections
12 2800 and 2802.

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

16 24. Furthermore, after Plaintiff complained to management/ownership about not getting
17 statutory breaks and not getting paid overtime compensation, THAI NAKORN stopped giving
18 Plaintiff shifts and took her off the schedule, essentially wrongfully terminating her
19 employment in a retaliatory fashion in contravention of Labor Code sections 98.6 and 1102.5.
20

21 **FIRST CAUSE OF ACTION**

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

23 **(California Industrial Welfare Commission Order 5-2001, California Code of**
24 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**
25 **(Plaintiff against all named defendants and all DOE defendants)**

26 25. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.
28

1 26. At all times relevant herein, Defendants were required to compensate their employees for
2 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
3 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
4 11050.

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

7 28. Under the aforementioned wage order and regulations, Plaintiff is to recover
8 compensation for all hours worked but not paid by Defendants for the three (3) years preceding
9 the filing of this Complaint.

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

13 30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
14 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
15 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
16 reasonable attorney's fees and costs of suit.

17 31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
19 amount known to Plaintiff once she has obtained all of her payroll records from
20 Defendants.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

27 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
28 to suffer or permit a California employee to work without paying wages at the minimum wage
rate for all hours worked as required by the applicable Industrial Welfare Commission

1 (hereinafter “IWC”) Wage Order No. 5-2001, codified at California Code of Regulations,
2 Title 8, Section 11050, subdivision 4.

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

7 35. During her employment, Plaintiff was regularly required as a matter of uniform policy
8 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
9 less than the minimum wage rate by Defendants for hours worked in violation of California
10 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
11 order(s).

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

16 37. For all hours worked by Plaintiff for which she was paid less than the minimum wage
17 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
18 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
19 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
20 Plaintiff is also entitled to attorney’s fees, costs and interests according to proof.

21 38. 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 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME**

26 **(California Industrial Welfare Commission Order 5-2001, California Code of
27 Regulations Title 8 Section 11050; California Labor Code Section 510)**

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

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

1 paragraphs 1 through 38, inclusive, of this Complaint as though fully set forth herein.

2 40. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
3 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
4 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
5 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
6 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
7 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

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

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

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

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

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

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

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

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

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

50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **FOURTH CAUSE OF ACTION**

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

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

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

7 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

28 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **FIFTH CAUSE OF ACTION**

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

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

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

7 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

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

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

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

19 61. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
20 from her employment, Defendants willfully refused and continue to refuse to pay her unpaid
21 wages as required by Labor Code Section 203.

22 62. 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. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
25 preceding the filing of this lawsuit.

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

64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **SIXTH CAUSE OF ACTION**

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

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

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

7 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

21 70. 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 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO GIVE REST BREAKS**

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

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

1 72. Plaintiff brings this cause of action under the following laws, for the following reasons:

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

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

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

1 75. 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 76. 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 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO GIVE MEAL BREAKS**

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

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

11 78. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 12 a. California Labor Code section 512(a), which requires that employees be given a 30-
13 minute uninterrupted meal break after five (5) hours of work, and a second
14 uninterrupted meal break after ten (10) hours of work;
- 15 b. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if any employer fails to provide an
18 employee a meal period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at the employee's regular rate of compensation for each workday that the
21 meal period is not provided;
- 22 c. California Industrial Welfare Commission Order No. 5 sections 11(B) and 11(D), as
23 codified under Title 8 of the California Code of Regulations Section 11050, which
24 states that if an employer fails to provide an employee a meal period in accordance
25 with the applicable provisions of the Wage Order, the employer shall pay the
26 employee one (1) hour of pay at the employee's regular rate of compensation for
27 each workday that the meal period is not provided;
- 28 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
codified under Title 8 of the California Code of Regulations Section 11050, which

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

9 79. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks

10 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted

11 to take a second relieved meal break after ten (10) hours of work, as required by California

12 law. California Labor Code section 512(a) and California Industrial Welfare Commission

13 Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq. requires

14 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,

15 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all

16 work duty. California Labor Code section 226.7 provides that employers may not require their

17 employees to work through their meal periods. California Labor Code section 226.7 and

18 California Code of Regulations section 11050 requires that if the employer fails to provide the

19 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour

20 of pay for each work day that the meal period is not given.

21 80. Under this cause of action, Plaintiff prays for wages due to her under the statutes,

22 regulations, and wage orders alleged in this cause of action along with any allowable interest,

23 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for

24 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

25 81. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's

26 fees as well as interest under Labor Code section 218.6.

27 82. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at

trial.

1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
4 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174,**
5 **1174.5, 1194, 1197, 1198, 2802)**

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

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

9 84. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
10 Defendants of the specific violations of the California Labor Code that Defendants and DOE
11 defendants have violated and continue to violate.

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

14 86. Plaintiff therefore has exhausted all administrative remedies required of her under
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
16 cause of action and pursue penalties in a representative action for Defendants' violations of the
17 Labor Code.

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

24 88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
25 violator and had one or more of the alleged violations committed against her, and therefore is
26 properly suited to represent the interests of other current and former employees, including all
27 current and former non-exempt, hourly paid employees who worked for THAI NAKORN at any
28 of their locations in the State of California during the applicable PAGA period.

89. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
penalties under California Labor Code sections 2698 and 2699 because of Defendants'

1 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

2 90. Plaintiff therefore has exhausted all administrative remedies required of her under
3 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
4 cause of action and pursue penalties in a representative action for Defendants' violations of the
5 Labor Code.

6 91. California Labor Code section 2699 et seq. imposes penalties upon culpable
7 Defendants for violating the Labor Code.

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

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

20 94. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
21 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802
25 via 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission
26 Wage Orders (no. 5) violated based on the facts alleged in this Complaint.

27 95. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's
28 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.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

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

96. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 95, inclusive, of this Complaint as thought fully set forth herein.

97. 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.”

98. 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 her job duties, which were not reimbursed by Defendants. These costs include, but are not limited to, reimbursement for uniforms as well as mileage. There were many occasions wherein the restaurant would run out of vegetables and Plaintiff would be asked to go buy vegetables in her own personal vehicle. In these instances, Plaintiff would not be reimbursed her mileage. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section 2802.

ELEVENTH CAUSE OF ACTION

UNLAWFUL TIP COLLECTION

(Lab. Code §§ 351 and 353)

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

99. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

100. During all times relevant herein, Defendants unlawfully collected tips meant for employees and also deducting the tips from Plaintiff’s and others’ earned wages. THAI NAKORN 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.

101. Labor Code section 351 makes it illegal for an employer to collect tips paid or

1 left for the employee and mandates that such tips are the employees' property.

2 102. Labor Code section 353 requires every employer to keep accurate records of all
3 gratuities received, whether received directly from the employee or indirectly by means of
4 deductions from the wages of the employee or otherwise.

5 103. By Defendants unlawfully collecting tips from Plaintiff, Defendants violated
6 California Labor Code Section 351 and 353. Therefore, Plaintiff demands return of all tips
7 unlawfully collected from her within three years of the filing of this complaint.

8 **TWELFTH CAUSE OF ACTION**

9 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

10 **(California Labor Code section 98.6)**

11 **(Plaintiff against THAI NAKORN THE ORIGINAL, LLC and DOE Defendants, and**
12 **each of them)**

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

15 105. California Labor Code section 98.6 provides, in pertinent part, as follows:

16 "A person shall not discharge an employee or in any manner discriminate, retaliate, or
17 take any adverse action against any employee or applicant for employment because the
18 employee or applicant engaged in any conduct delineated in this chapter...or because
19 the employee or applicant...made a written or oral complaint that he or she is owed
unpaid wages...

20 106. In doing the things herein alleged, Defendants violated Labor Code section 98.6 in
21 that they retaliated against Plaintiff for complaining about her wages and about the labor code
22 violations that were being committed by Defendants in the workplace.

23 107. As a direct and proximate result of the aforementioned acts and omissions of
24 Defendants, Plaintiff suffered general and compensatory damages, including but not
25 limited to, loss of income (past and future), loss of employment benefits (past and future),
26 general and compensatory damages (past and future), mental pain and anguish and emotional
27 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
28

1 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
2 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
3 violation of this section.

4 108. The foregoing conduct engaged in by Defendant THAI NAKORN THE ORIGINAL,
5 LLC and each of its directors, officers and/or managing agents, constitutes malice, fraud, and
6 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
7 of their workers' right to work in an environment free of retaliation, so as to justify the
8 imposition of punitive damages to punish and set an example of said Defendants.

9 **THIRTEENTH CAUSE OF ACTION**

10 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

11 **(Plaintiff against THAI NAKORN THE ORIGINAL, LLC and DOE Defendants, and**
12 **each of them)**

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

15 110. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
16 and binding on Defendants. This section requires Defendants to refrain from
17 retaliating against an employee for refusing to participate in an activity that he/she reasonably
18 believes would result in a violation of state or federal statute, or a violation or
19 noncompliance with a state or federal rule or regulation. California Labor Code section
20 1102.5 also requires Defendants to refrain from retaliating against an employee for disclosing
21 information to a person with authority over the employee if the employee has reasonable cause
22 to believe that the information discloses a violation of state or federal statute, or a violation of
23 or noncompliance with a local, state, or federal rule or regulation, regardless of whether
24 disclosing the information is part of the employee's job duties.

25 111. As discussed fully above, Plaintiff complained to Defendants about the company's
26
27
28

1 illegal conduct and the labor code violations being committed against Plaintiff.

2 112. Defendant THAI NAKORN THE ORIGINAL, LLC retaliated against Plaintiff for her
3 whistleblowing, as alleged above, all in violation of Labor Code § 1102.5.

4 113. As a direct and proximate result of the aforementioned acts and omissions of
5 Defendant THAI NAKORN THE ORIGINAL, LLC, Plaintiff suffered general and
6 compensatory damages, including but not limited to, loss of income (past and future), loss of
7 employment benefits (past and future), general and compensatory damages (past and future),
8 mental pain and anguish and emotional distress (past and future), and will continue to suffer in
9 the future, in an amount to be proved at trial.
10

11 114. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
12 and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.

13 **FOURTEENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Against Defendant THAI NAKORN THE ORIGINAL, LLC and all DOE Defendants)**

16 115. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.
18

19 116. At all times during her employment with Defendant THAI NAKORN THE
20 ORIGINAL, LLC, Plaintiff performed her duties with the utmost diligence and competence.

21 117. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
22 actions to treat her differently, and ultimately terminate her employment as alleged
23 herein, was motivated by Plaintiff's whistleblowing and complaints about wage and hour
24 violations being committed against Plaintiff. Defendant THAI NAKORN THE ORIGINAL,
25 LLC intentionally created the aforementioned retaliation, thereby not giving Plaintiff an
26 opportunity to work in an environment free of retaliation.

27 118. The employment of Plaintiff was wrongfully terminated in December 2021/January
28 2022 in violation of the fundamental public policy of the State of California with respect to

1 retaliating against an employee on account of her whistleblowing. Moreover, Plaintiff was
2 forced to hire an attorney to assist her to end these illegal activities. Said conduct violated
3 statutory and constitutional expressions of public policy including, the California Labor Code
4 and the California Constitution, Article 1 section 8.

5 119. As set forth above, said actions by Defendants were wrongful and in violation of the
6 fundamental principles of the public policy of the State of California as reflected in its laws,
7 objectives and policies. Said statutes and constitutional expressions of public policy include,
8 but are not limited to, California Labor Code sections 98.6 and 1102.5 and the California
9 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
10 just the private interests of the employers and employees whom they govern or protect.

11 120. As a direct and proximate result of the aforementioned acts and omissions of
12 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
13 loss of income (past and future), loss of employment benefits (past and future), general and
14 compensatory damages (past and future), mental pain and anguish and emotional distress (past
15 and future), and will continue to suffer in the future, in an amount to be proved at trial.
16

17 121. The foregoing conduct engaged in by Defendants and each of their directors, officers
18 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
19 and carried on with a conscious and willful disregard of their workers' right to work in an
20 environment free of retaliation due to whistleblowing, so as to justify the imposition of
21 punitive damages to punish and set an example of said Defendants.
22

23 **FIFTEENTH CAUSE OF ACTION**

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

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

26 **(Plaintiff against THAI NAKORN THE ORIGINAL, LLC and all DOE defendants)**

27 122. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

1 123.By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
2 constitutes unfair and unlawful business practices under California Business and Professions
3 Code Section 17200, et seq.

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

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

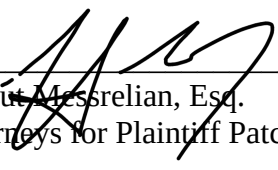
11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For special and consequential damages to the extent allowed by law;
- 14 2. For general damages in an amount subject to proof at trial;
- 15 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
16 at trial;
- 17 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 proof at trial;
- 21 6. For restitution and disgorgement for all unfair business practices by Defendant Thai
22 Nakorn the Original, LLC against Plaintiff in an amount subject to proof at trial;
- 23 7. For an order enjoining Defendant Thai Nakorn The Original, LLC from further unfair
24 and unlawful business practices in violation of Business and Professions Code Sections
25 17200, et seq.;
- 26 8. For punitive and exemplary damages against Defendant Thai Nakorn The Original,
27 LLC in an amount subject to proof;
- 28 9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
13. For the imposition of civil penalties and/or statutory penalties;
14. For all interest as allowed by law;
15. For all costs and disbursements incurred in this suit;
16. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 1102.6 and/or other applicable laws; and
17. For such other and further relief as this Court may deem proper.

DATED: July 19, 2022

MESSRELIAN LAW INC.

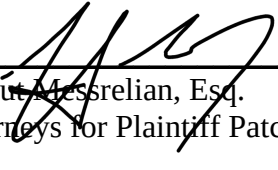
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Patcha Marion

DEMAND FOR JURY TRIAL

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

DATED: July 19, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Patcha Marion