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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANGELICA AGUALLO and CLEMENTE
GARCIA, individually and on behalf of all
others similarly situated and aggrieved
employees,

Plaintiffs,

v.

BACARI PDR, LLC; BACARI
AMERICANA, INCORPORATED; BACARI
CC INC; BACARI MC INCORPORATED;

Case No.: 22STCV10062

**THIRD AMENDED CLASS ACTION
COMPLAINT**

- 1. FAILURE TO PROVIDE MEAL PERIODS**
- 2. FAILURE TO AUTHORIZE OR PERMIT REST PERIODS**

1 BACARI OPERATIONS, LLC; and DOES 5
2 through 100, inclusive,

3 DEFENDANTS.
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3. FAILURE TO PAY OVERTIME
WAGES

4. FAILURE TO PAY MINIMUM
WAGES

5. FAILURE TO TIMELY PAY WAGES
EARNED DURING EMPLOYMENT

6. FAILURE TO TIMELY PAY FINAL
WAGES

7. FAILURE TO PROVIDE ITEMIZED
WAGE STATEMENTS

8. FAILURE TO REIMBURSE
BUSINESS RELATED EXPENSES

9. UNFAIR COMPETITION

10. CONVERSION

11. CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEY
GENERAL ACT OF 2004 ("PAGA"),
LABOR CODE SECTION 2698, *et*
seq.

DEMAND FOR JURY TRIAL

19 Plaintiffs ANGELICA AGUALLO ("AGUALLO") and CLEMENTE GARCIA
20 ("GARCIA") (AGUALLO and GARCIA collectively, "PLAINTIFFS"), individually and on behalf
21 of all other similarly situated and aggrieved employees, allege the following against BACARI PDR,
22 LLC, BACARI AMERICANA, INCORPORATED; BACARI CC INC; BACARI MC
23 INCORPORATED; BACARI OPERATIONS, LLC, and DOES 1 through 100 (hereinafter
24 collectively referred to as "DEFENDANTS").

25 **NATURE OF THIS ACTION**

26 1. This is a class and Labor Code Private Attorneys' General Act of 2004 ("PAGA")
27 action for wage and hour violations arising out of, among other things, DEFENDANTS' failure to,
28 in accordance with California law, provide meal periods and authorize or permit rest breaks, pay

minimum wages, pay overtime wages, pay wages timely in the course of and upon separation of employment, provide compliant itemized wage statements, and reimburse business related expenses.

PARTIES

4. GARCIA is and at all times relevant hereto has been, an individual residing in Los Angeles, California. DEFENDANTS hired GARCIA in or around September 2021, where he worked as a line cook at DEFENDANTS' Silverlake restaurant, located at 363 Sunset Blvd., Los Angeles, CA 90026, where he performed various duties as required for the position.

5. PLAINTIFFS bring this action on their own behalf, and on behalf of all other persons similarly situated, namely each and every individual who have worked or will work as a nonexempt employee during the Class Period at DEFENDANTS' locations in California, and who were not compensated in accordance with California law.

6. PLAINTIFFS also bring this action on behalf of themselves, all aggrieved California-based non-exempt employees of DEFENDANTS, and the State of California pursuant

1 to the PAGA. PLAINTIFFS and the aggrieved employees are current, former and/or future
2 employees of DEFENDANTS who worked, work, or will work for DEFENDANTS as hourly non-
3 exempt employees in California. At all times mentioned herein, PLAINTIFFS were employed by
4 DEFENDANTS within the one year prior to the filing of the complaint.

5 7. PLAINTIFFS are informed and believe and on that basis allege that
6 DEFENDANTS, and each of them, are or were registered to do business in the State of California,
7 with their principal place of business in Los Angeles, California. PLAINTIFFS are informed and
8 believe and on that basis allege that, DEFENDANTS own and operate approximately seven
9 restaurant locations in California, including the location where AGUALLO worked at 6805 S Vista
10 Del Mar Ln, Playa Del Rey, California 90293, and where GARCIA worked at 363 Sunset Blvd.,
11 Los Angeles, CA 90026.

12 8. Defendant BACARI CC INC, previously identified as DOE 1, was and is an
13 employer who does business throughout the state of California, with stores located throughout the
14 state of California, and whose employees are engaged throughout this county and the State of
15 California.

16 9. Defendant BACARI AMERICANA, INCORPORATED, previously identified as
17 DOE 2, was and is an employer who does business throughout the state of California, with stores
18 located throughout the state of California, and whose employees are engaged throughout this county
19 and the State of California.

20 10. Defendant BACARI MC INCORPORATED, previously identified as DOE 3, was
21 and is an employer who does business throughout the state of California, with stores located
22 throughout the state of California, and whose employees are engaged throughout this county and
23 the State of California.

24 11. Defendant BACARI OPERATIONS, LLC, previously identified as DOE 4, was and
25 is an employer who does business throughout the state of California, with stores located throughout
26 the state of California, and whose employees are engaged throughout this county and the State of
27 California.

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1 12. DEFENDANTS BACARI PDR, LLC; BACARI AMERICANA,
2 INCORPORATED; BACARI CC INC; BACARI MC INCORPORATED; BACARI
3 OPERATIONS, LLC, and DOES 5 through 100 shall be collectively referred to as
4 “DEFENDANTS”.

5 13. The true names or capacities, whether individual, associate or otherwise, of Doe
6 DEFENDANTS 5 to 100, inclusive, are unknown to PLAINTIFFS and, therefore, PLAINTIFFS
7 sue these Doe DEFENDANTS by such fictitious names. DEFENDANTS DOES 5 to 100, inclusive
8 are, and at all times relevant hereto acted on behalf of each of the DEFENDANTS and violated or
9 caused to be violated provisions of the Labor Code and/or the Industrial Welfare Commission’s
10 wage orders regulating meal and rest periods. PLAINTIFFS will seek leave of this Court to amend
11 this Complaint to allege such names and capacities as soon as they are ascertained. PLAINTIFFS
12 are informed and believe and thereon allege that each of these fictitiously named DEFENDANTS
13 is responsible in some manner for the occurrences alleged herein, and that PLAINTIFFS’ injuries
14 and damages as alleged and set forth herein were proximately caused by such fictitiously named
15 DEFENDANTS. Each of the individual DEFENDANTS is sued individually and in his or her
16 capacity as an agent, shareholder, owner, representative, manager, supervisor, independent
17 contractor and/or employee of each defendant who violated or caused to be violated the provisions
18 of the Labor Code and/or the Industrial Welfare Commission’s wage orders regulating meal and
19 rest periods.

20 14. PLAINTIFFS are informed and believe and thereon allege that at all times relevant
21 herein, each and every one of the DEFENDANTS, including the Doe DEFENDANTS, acted in
22 concert and in furtherance of each other’s interest. The acts of any individual DEFENDANTS, as
23 described herein, were known to and ratified by all DEFENDANTS.

24 15. PLAINTIFFS are informed and believe and thereon allege that at all relevant times
25 each of the DEFENDANTS was the integrated enterprise, joint employer of PLAINTIFFS and was
26 engaged with some or all the other DEFENDANTS in a joint enterprise for profit and bore such
27 other relationships to some or all of the other DEFENDANTS so as to be liable for the conduct of
28 them. PLAINTIFFS performed services for each and every one of DEFENDANTS, and to the

1 mutual benefit of all DEFENDANTS, and all DEFENDANTS shared control of PLAINTIFFS as
2 employers, either directly or indirectly, and of the manner in which DEFENDANTS' business was
3 conducted.

4 16. PLAINTIFFS are further informed and believe and thereon allege that all
5 DEFENDANTS acted pursuant to and within the scope of the relationships alleged above, that all
6 DEFENDANTS knew or should have known about, authorized, ratified, adopted, approved,
7 controlled, aided and abetted the conduct of all other DEFENDANTS; and that all DEFENDANTS
8 acted pursuant to a conspiracy and agreement to do the things alleged herein.

9 17. PLAINTIFFS make the allegations in this Complaint without any admission that, as
10 to any particular allegation, PLAINTIFFS bears the burden of pleading, proof, or persuasion, and
11 PLAINTIFFS reserve all of PLAINTIFFS' rights to plead in the alternative.

12 **JURISDICTION AND VENUE**

13 18. This Court has jurisdiction over the claims alleged herein pursuant to the Labor
14 Code, including but not limited to §§ 201-204, 210, 226, 226.7, 510, 512, 1194, 1197, 1197.1,
15 2800, 2802, Business and Professions Code section 17200, *et seq*, and the Industrial Wage
16 Commission ("IWC") Orders, including, but not limited to Wage Order No. 5.

17 19. This Court has jurisdiction over the entire action by virtue of the fact that this is a
18 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the minimal
19 jurisdiction of this Court. Venue is proper in this Court because the events and conduct giving rise
20 to PLAINTIFFS' claims in this action occurred in this Judicial District and PLAINTIFFS and
21 DEFENDANTS either resided in this judicial district and/or are duly registered and authorized to
22 do business in this judicial district located in Los Angeles County.

23 20. This Court has jurisdiction over PLAINTIFFS' and all aggrieved California-based
24 non-exempt employees' claims because PLAINTIFFS' lawsuit seeks civil penalties for herself, the
25 State of California, and all aggrieved California-based non-exempt employees of DEFENDANTS
26 in excess of \$25,000 and DEFENDANTS employed aggrieved employees and injuries occurred in
27 locations throughout California including at 6805 S Vista Del Mar Ln, Playa Del Rey, CA 90293,
28 which is located in Los Angeles County.

1 **CLASS ACTION ALLEGATIONS**

2 21. PLAINTIFFS bring this action on behalf of themselves, and on behalf of all other
3 persons similarly situated, namely each and every individual who have worked or will work as a
4 nonexempt employee during the Class Period at DEFENDANTS' locations in California, and who
5 were not compensated in accordance with California law.

6 22. **Definition:** PLAINTIFFS bring this action on behalf of themselves and
7 the class pursuant to California *Code of Civil Procedure* § 382 and is consistent with Fed. R. Civ.
8 P. Rules 23(a), (b)(1), (b)(2), and (b)(3). The class is defined as: "All current and former nonexempt
9 employees who worked in California for DEFENDANTS, at any time beginning four (4) years
10 prior to the filing of the original Complaint through the date that class certification is granted."

11 23. **Numerosity of the Class:** The persons in the Class proposed herein are so numerous
12 that joinder of all such persons is impracticable. PLAINTIFFS are informed and believe and, on
13 that basis, allege that there are over 1000 current and former aggrieved employees of
14 DEFENDANTS employed as nonexempt employees at DEFENDANTS' restaurants in California
15 during the Class Period. The precise number of Class Members will be known to PLAINTIFFS
16 during discovery. Disposition of PLAINTIFFS' claims in a class action will be of benefit to all
17 parties and to the Court.

18 24. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant
19 to Code of Civil § 382, common questions of law and fact exist as to all members of the Class.
20 These questions predominate over any questions affecting only individual Class members. These
21 common legal and factual questions include:

- 22 a. Whether DEFENDANTS violated Labor Code § 226.7 and/or § 512 and/or
23 Industrial Welfare commission Order No. 5 and engaged in a pattern or practice
24 of failing to provide timely, off-duty thirty (30) minute meal periods;
25 b. Whether DEFENDANTS engaged in a pattern or practice of failing to
26 compensate PLAINTIFFS and the members of the Class for missed, untimely,
27 or on-duty minute meal periods as required by California law;

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- c. Whether DEFENDANTS violated Labor Code §226.7 and Industrial Welfare Commission Order No. 5 by failing to provide ten (10) minute, uninterrupted rest periods as required by California law;
- d. Whether DEFENDANTS engaged in a pattern or practice of failing to compensate PLAINTIFFS and the members of the Class for failing to provide ten (10) minute, uninterrupted rest periods as required by California law;
- e. Whether DEFENDANTS engaged in a pattern or practice of failing to pay minimum wages to PLAINTIFFS and the members of the Class for all hours worked as required by California law;
- f. Whether DEFENDANTS engaged in a pattern or practice of failing to pay overtime wages to PLAINTIFFS and the members of the Class for all overtime hours worked as required by California law;
- g. Whether DEFENDANTS engaged in conversion by failing to pay PLAINTIFFS and Class Members for all accrued gratuities pursuant to Labor Code §350 et. seq.;
- h. Whether DEFENDANTS failed to reimburse PLAINTIFFS and Class Members for necessary business-related expenses pursuant to Labor Code §2802;
- i. Whether DEFENDANTS violated Labor Code §226(a) by failing to issue accurate itemized wage statements to PLAINTIFFS and members of the Class;
- j. Whether DEFENDANTS violated Labor Code §§ 201-203 by failing to timely pay all wages due at termination;
- k. Whether DEFENDANTS violated Labor Code §§ 204 by failing to timely pay all wages due in the course of employment;
- l. Whether DEFENDANTS' failure to pay wages was willful;
- m. The nature and extent of class-wide injury and the measure of damages for the injury.

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1 25. **Typicality:** PLAINTIFFS' claims are typical of the members of the Class because
2 PLAINTIFFS, nonexempt employees of DEFENDANTS, were exposed and subjected to the same
3 unlawful business practices as other nonexempt employees employed by DEFENDANTS in
4 California during the Class Period. PLAINTIFFS and the members of the Class sustained the same
5 type of damages and losses.

6 26. **Adequacy:** PLAINTIFFS are adequate representatives of the Class they seek to
7 represent because their interests do not conflict with the interests of the members of the Class.
8 PLAINTIFFS have retained counsel competent and experienced in complex class action litigation
9 and PLAINTIFFS intend to prosecute this action vigorously. The interests of members of the Class
10 will be fairly and adequately protected by PLAINTIFFS and their counsel.

11 27. **Superiority and Substantial Benefit:** The class action is superior to other available
12 means for the fair and efficient adjudication of PLAINTIFFS' and the Class Members' claims. The
13 damages suffered by each individual Class Member may be limited. Damages of such magnitude
14 are small given the burden and expense of individual prosecution of the complex and extensive
15 litigation necessitated by DEFENDANTS' conduct. Further, it would be virtually impossible for
16 Class Members to redress the wrongs done to them on an individual basis. Even if members of the
17 Class themselves could afford such individual litigation, the court system could not. Individualized
18 litigation increases the delay and expense to all parties and the court system, due to the complex
19 legal and factual issues of the case. By contrast, the class action device presents far fewer
20 management difficulties, and provides the benefits of single adjudication, economy of scale, and
21 comprehensive supervision by a single court.

22 28. The Class should also be certified because the prosecution of separate actions by
23 individual Class Members would create a risk of inconsistent adjudications which would establish
24 incompatible standards of conduct for DEFENDANTS.

25 **CLASS/PAGA ACTION ALLEGATIONS**

26 29. DEFENDANTS own and/or operate Bacari restaurants at approximately seven
27 locations throughout California.

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1 30. AGUALLO worked for DEFENDANTS' Playa Del Rey location located at 6805 S
2 Vista Del Mar Ln, Playa Del Rey, CA 90293 from June 2020 to June 20, 2021, as a server.

3 31. GARCIA worked as a line cook at DEFENDANTS' Silverlake restaurant, located
4 at 363 Sunset Blvd., Los Angeles, CA 90026, where he performed various duties as required for
5 the position.

6 32. During PLAINTIFFS' employment, DEFENDANTS would provide AGUALLO
7 and others similarly situated with weekly reports on tip earnings.

8 33. Thereafter, DEFENDANTS ceased providing AGUALLO and others similarly
9 situated with weekly tip reports. Thereafter, AGUALLO noticed her daily tips reduce in amount
10 to about \$100/shift regardless of the amounts in tips she would receive each shift.

11 34. Additionally, AGUALLO and others similarly situated were required by
12 DEFENDANTS to pay a portion of the gratuities left by patrons to DEFENDANTS' management,
13 in violation of *Labor Code* § 351.

14 35. Further, DEFENDANTS calculated amounts due to AGUALLO, the putative class
15 members, and aggrieved employees by taking a cut for management and/or other employees who
16 did not actually earn the tips, rather than placing the entire amount actually left by patrons into the
17 tip pool. This caused deductions to be made from servers' wages when the difference between the
18 percentage of the sales assessed against them is more than the amount of gratuities left by patrons,
19 in violation of *Labor Code* §§ 221, 225.5, 558, 558.1, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198,
20 and IWC Wage Order §§ 3, 4, and 20. These practices also caused:

- 21 a. A failure to pay all wages earned at the time of separation from
22 employment, in violation of *Labor Code* § 203.
- 23 b. A failure to timely pay wages earned, in violation of *Labor Code* §
24 204.
- 25 c. Wage statements that did not accurately report wages earned, in
26 violation of *Labor Code* § 226.

27 36. At all times relevant hereto, DEFENDANTS employed individuals as nonexempt
28 employees, but failed to provide and/or permit meal and rest periods as required by California law.

1 37. During the relevant time period, DEFENDANTS failed to pay PLAINTIFFS and
2 other class members all time earned at the minimum wage rate included, inter alia, requiring
3 PLAINTIFFS and other class members to: (1) work of the clock during meal and rest periods,
4 including second meal periods and third rest periods; (2) contacting PLAINTIFFS and other class
5 members on their cell phones outside of work hours to discuss work matters; and (3) requiring
6 PLAINTIFFS and the class members to perform additional off the clock work prior to clocking in
7 and after clocking out. DEFENDANTS' practices resulted in the systematic underpayment of
8 wages (including minimum wages, straight time wages and overtime wages) to PLAINTIFFS and
9 the class members who were denied wages for all time worked.

10 38. During the relevant time period, PLAINTIFFS and other Class Members regularly
11 worked in excess of eight (8) hours in a day, oftentimes in excess of twelve (12) hours in a day,
12 and/or in excess of forty (40) hours in a week. However, DEFENDANTS did not record
13 PLAINTIFFS and other class members' actual hours worked and intentionally and willfully failed
14 to pay all overtime wages owed to PLAINTIFFS and other class members.

15 39. By virtue of this failure to abide by the California Labor Code and IWC Wage
16 Orders, DEFENDANTS have received substantial sums of money, and have realized profits from
17 the labor of its nonexempt employees.

18 40. PLAINTIFFS are informed and believe and, on that basis, allege that,
19 DEFENDANTS regularly denied PLAINTIFFS, and others similarly situated, meal period, as
20 required by California law. PLAINTIFFS are informed and believe and, on that basis, allege that,
21 DEFENDANTS failed to compensate PLAINTIFFS, members of the putative Class, and aggrieved
22 employees for any and all missed meal periods.

23 41. PLAINTIFFS are informed and believe and, on that basis, allege that,
24 DEFENDANTS regularly denied PLAINTIFFS, and others similarly situated, rest periods, as
25 required by California law. PLAINTIFFS are informed and believe and, on that basis, allege that,
26 DEFENDANTS failed to compensate PLAINTIFFS, members of the putative Class, and aggrieved
27 employees for any and all missed rest periods.

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1 42. These practices caused:

- 2 a. A failure to pay all wages earned at the time of separation from
3 employment, in violation of *Labor Code* § 203.
4 b. A failure to timely pay wages earned, in violation of *Labor Code* §
5 204.
6 c. Wage statements that did not accurately report hours worked, in
7 violation of *Labor Code* § 226.

8 43. When it was very busy, PLAINTIFFS and all others similarly-situated were denied
9 the ability to take lawful meal and/or rest breaks due to business demands. No premium
10 compensation was paid when the restaurant failed to provide meal breaks or failed to permit rest
11 breaks. These practices result violations of *Labor Code* § 226.7, 512, and IWC Wage Order
12 Sections 11 and 12.

13 44. PLAINTIFFS, and others similarly situated, have been damaged as a result of their
14 unlawful treatment, in that they have not received legally required wages and have been, and
15 continue to be, unlawfully denied meal and rest periods.

16 45. PLAINTIFFS are informed and believe and, on that basis, allege that,
17 DEFENDANTS regularly failed to provide PLAINTIFFS, and others similarly situated, accurate
18 itemized wage statements including all hours worked and wages earned.

19 46. PLAINTIFFS are informed and believe and, on that basis, allege that, PLAINTIFFS,
20 and others similarly situated, were not timely paid all wages due at the time of separation of
21 employment.

22 47. PLAINTIFFS brings this action on behalf of themselves, as well as on behalf of all
23 nonexempt individuals who have worked for DEFENDANTS' restaurants during the Class Period.
24 The relief sought in this action is necessary to restore to all employees who have worked at
25 DEFENDANTS' restaurants at any time during the Class Period, the money which DEFENDANTS
26 herein has illegally acquired through the unlawful treatment described herein, and to prohibit
27 DEFENDANTS, and each of them, from continuing to subject all current and future employees to
28 these same unfair, fraudulent and unlawful business and employment practices.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF CALIFORNIA LABOR**
3 **CODE SECTIONS 512 AND 226.7 AND THE WAGE ORDER**

4 **(By PLAINTIFFS and Members of the Class Against**
5 **All DEFENDANTS and DOES 5 through 100, Inclusive)**

6 48. PLAINTIFFS and the Class members incorporate by reference all paragraphs above,
7 as if fully set forth herein.

8 49. During the entirety of their employment, DEFENDANTS regularly denied
9 PLAINTIFFS and the Class members meal periods. DEFENDANTS failed to compensate
10 PLAINTIFFS and the Class members for denied meal periods.

11 50. California law requires an employer to provide its employees an uninterrupted meal
12 period of no less than thirty (30) minutes in which the employee is relieved of all duties and the
13 employer relinquishes control over the employee's activities no later than the end of the employee's
14 fifth hour of work and a second meal period no later than the employee's tenth hour of work. (Labor
15 Code sections 226.7, 512; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004).
16 If the employer requires the employee to remain at the work site or facility during the meal period,
17 the meal period must be paid. This is true even where the employee is relieved of all work duties
18 during the meal period. (*Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968). If the
19 employee is not free to leave the work premises or worksite during the meal period, even if the
20 employee is relieved of all other duty during the meal period, the employee is subject to the
21 employer's control and the meal period is counted as time worked.

22 51. If an employer fails to provide an employee a meal period in accordance with the
23 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
24 for each workday that a legally required and compliant meal period was not provided. (Labor Code
25 section 226.7).

26 52. DEFENDANTS failed to pay premium wages to PLAINTIFFS and the Class
27 members to compensate them for each workday they did not receive all legally required and/or
28 compliant meal periods.

53. As a result of DEFENDANTS' failure to provide PLAINTIFFS and the Class members with meal periods in accordance with the above-referenced legal authority, in addition to any wages due and owing for working through their meal periods, and separate from any other penalties to which they are entitled, PLAINTIFFS and the Class members are owed one (1) hour at their regular rate of compensation for each meal period that was not provided.

54. Pursuant to Labor Code section 226.7 and the Wage Order, PLAINTIFFS and the Class members are entitled to recover additional compensation for all meal periods that were missed, but not paid for, during the four (4) years preceding the filing of this Complaint, plus penalties pursuant to Labor Code §§ 226.7, and 558.

55. As a proximate result of the aforementioned violations, PLAINTIFFS and the Class members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their obligation under state law. PLAINTIFFS and the Class members are thus entitled to recover nominal, actual, and compensatory damages in an amount according to proof at time of trial.

SECOND CAUSE OF ACTION

FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR

CODE SECTION 226.7 AND THE WAGE ORDER

(By PLAINTIFFS and Members of the Class

Against All DEFENDANTS and DOES 5 through 100, Inclusive)

56. PLAINTIFFS and the Class members incorporate by reference all paragraphs above as if fully set forth herein.

57. California law requires that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof....” Wage Order 5, §12. Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10

1 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53
2 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement “obligates
3 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
4 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
5 relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If
6 an employer fails to provide an employee a rest period in accordance with the applicable provisions
7 of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular
8 rate of compensation for each work day that the rest period is not provided.” Wage Order 5, §12;
9 Labor Code §226.7.

10 58. During the entirety of their employment, DEFENDANTS regularly denied
11 PLAINTIFFS and the Class members rest periods from all work duties. DEFENDANTS failed to
12 compensate PLAINTIFFS and the Class members for denied rest periods.

13 59. Similarly, DEFENDANTS failed to pay PLAINTIFFS and the Class members one
14 (1) hour of pay at their regular rate of pay for each workday they did not receive at least one legally
15 required and/or legally compliant rest periods.

16 60. Pursuant to Labor Code section 226.7 and the Wage Order DEFENDANTS are
17 liable to PLAINTIFFS for one (1) hour of additional pay at the regular rate of compensation for
18 each workday that DEFENDANTS did not provide all legally required and/or legally compliant
19 rest periods plus pre-judgment interest.

20 ***THIRD CAUSE OF ACTION***

21 *Failure to Pay Overtime Wages in Violation of*

22 *Cal. Lab. Code §§ 510, 1194, 1198 and the Applicable Wage Order*

23 **(By PLAINTIFFS and Members of the Class**

24 **Against All DEFENDANTS and DOES 5 through 100, Inclusive)**

25 61. PLAINTIFFS and the Class members incorporate by reference all paragraphs above
26 as if fully set forth herein.

27 62. Pursuant to California Labor Code sections 510 and 1194 and the Wage Order,
28 hourly, non-exempt employees are entitled to receive a higher rate of pay for all hours worked in

1 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.

2 California Labor Code section 510, subdivision (a), states in relevant part:

3 Eight hours of labor constitutes a day's work. Any work in excess of eight
4 hours in one workday and any work in excess of 40 hours in any one
5 workweek and the first eight hours worked on the seventh day of work in any
6 one workweek shall be compensated at the rate of no less than one and one-
7 half times the regular rate of pay for an employee. Any work in excess of 12
8 hours in one day shall be compensated at the rate of no less than twice the
9 regular rate of pay for an employee. In addition, any work in excess of eight
10 hours on any seventh day of a workweek shall be compensated at the rate of
11 no less than twice the regular rate of pay of an employee. Nothing in this
12 section requires an employer to combine more than one rate of overtime
13 compensation in order to calculate the amount to be paid to an employee for
14 any hour of overtime work.

15 Further, California Labor Code section 1198 provides,

16 The maximum hours of work and the standard conditions of labor fixed by
17 the commission shall be the maximum hours of work and the standard
18 conditions of labor for employees. The employment of any employee for
19 longer hours than those fixed by the order or under conditions of labor
20 prohibited by the order is unlawful.

21 63. Despite California law requiring employers to pay employees a higher rate of pay
22 for all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a
23 workweek, and on the seventh day of work in a workweek, DEFENDANTS failed to pay all
24 overtime wages to PLAINTIFFS and Class Members for their daily overtime hours worked.

25 64. During the relevant time period, PLAINTIFFS and other Class Members regularly
26 worked in excess of eight (8) hours in a day, oftentimes in excess of twelve (12) hours in a day,
27 and/or in excess of forty (40) hours in a week. However, DEFENDANTS did not record
28 PLAINTIFFS' and other class members' actual hours worked and intentionally and willfully failed
to pay all overtime wages owed to PLAINTIFFS and other class members. Some examples of
DEFENDANTS' failure to pay overtime wages included, inter alia, requiring PLAINTIFFS and
other class members to: (1) work of the clock during meal and rest periods, including second meal
periods and third rest periods; (2) contacting PLAINTIFFS and other class members on their cell
phones outside of work hours to discuss work matters; and (3) requiring PLAINTIFFS and the class

1 members to perform additional off the clock work prior to clocking in and after clocking out.

2 65. DEFENDANTS' practices resulted in the systematic underpayment of wages
3 (including minimum wages, straight time wages and overtime wages) to PLAINTIFFS and the class
4 members who were denied wages for all time worked.

5 66. DEFENDANTS' failure to pay PLAINTIFFS and other class members as outlined
6 above violates California Labor Code sections 510 and 1198 and is therefore unlawful.

7 67. Pursuant to California Labor Code section 1194, PLAINTIFFS and other class
8 members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and
9 attorneys' fees.

10 ***FOURTH CAUSE OF ACTION***

11 *Failure to Pay Minimum Wages in Violation of*

12 *Cal. Lab. Code §§ 1194, 1197, 1197.1 and the Applicable Wage Order*

13 **(By PLAINTIFFS and Members of the Class**

14 **Against All DEFENDANTS and DOES 5 through 100, Inclusive)**

15 68. PLAINTIFFS and the Class members incorporate by reference all paragraphs above
16 as if fully set forth herein.

17 69. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
18 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
19 wage to be paid to employees and the payment of wages less than the minimum wage is unlawful.
20 PLAINTIFFS and other class members were not paid the appropriate minimum wages for all hours
21 worked.

22 70. Some examples of DEFENDANTS' failure to pay PLAINTIFFS and other class
23 members all time earned at the minimum wage rate included, inter alia, requiring PLAINTIFFS
24 and other class members to: (1) work off the clock during meal and rest periods, including second
25 meal periods and third rest periods; (2) contacting PLAINTIFFS and other class members on their
26 cell phones outside of work hours to discuss work matters; and (3) requiring PLAINTIFFS and the
27 class members to perform additional off the clock work prior to clocking in and after clocking out.

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71. DEFENDANTS' practices resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to PLAINTIFFS and the class members who were denied wages for all time worked. Accordingly, DEFENDANTS regularly failed to pay at least minimum wages to PLAINTIFFS and other class members for all hours they worked in violation of California Labor Code sections 1194, 1197, and 1197.1.

72. Pursuant to California Labor Code section 1194, 1197, and 1197.1 PLAINTIFFS and other class members are entitled to recover their unpaid minimum wage compensation and liquidated damages, as well as interest, costs, and attorneys' fees.

FIFTH CAUSE OF ACTION

**FAILURE TO PAY ALL WAGES TIMELY DURING EMPLOYMENT IN VIOLATION
OF LABOR CODE SECTIONS 204 AND 210**

(By PLAINTIFFS and Members of the Class

Against All DEFENDANTS and DOES 5 through 100, Inclusive)

73. PLAINTIFFS incorporates by reference all paragraphs above as if fully set forth herein.

74. Pursuant to California Labor Code section 204, all wages earned by any person in any employment between the 1st and 15th days of any calendar month, are due and payable between the 16th and 26th day of the month during which the labor was performed. All wages earned by any person in any employment between the 16th and last day of any calendar month, are due and payable between the 1st and 10th day of the following month.

75. During the relevant time period, DEFENDANTS intentionally and willfully failed to pay PLAINTIFFS and other class members all wages due to them, within any time period permitted under Labor Code §204.

76. During the relevant time period, DEFENDANTS edited and reduced the total number of hours actually worked on PLAINTIFFS and other Class Members' earnings statement. Despite being made aware of the error, DEFENDANTS continued on with the practice of underpaying PLAINTIFFS and Class Members. DEFENDANTS also required PLAINTIFFS and other class members to work through meal and rest breaks without paying any premium wage,

1 failed to pay all accrued gratuities in the pay periods after they were earned, and often required off-
2 the-clock work of PLAINTIFFS and other Class Members as described herein.

3 77. As a result, DEFENDANTS failed to pay PLAINTIFFS and other class members
4 all wages owed to them in a timely fashion, in violation of Labor Code §204(a).

5 78. Labor Code §210 authorizes PLAINTIFFS and Class Members to recover statutory
6 penalties for each violation of Labor Code §204, and PLAINTIFFS seek such penalties in
7 accordance with Labor Code §210, in addition to recovering the untimely paid wages.

8 **SIXTH CAUSE OF ACTION**

9 **FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT**
10 **IN VIOLATION OF LABOR CODE SECTIONS 201 AND 203**

11 **(By PLAINTIFFS and Members of the Class**

12 **Against All DEFENDANTS and DOES 5 through 100, Inclusive)**

13 79. PLAINTIFFS incorporates by reference all paragraphs above as if fully set forth
14 herein.

15 80. At all relevant times, PLAINTIFFS and the Class members were employees of
16 DEFENDANTS covered by California Labor Code sections 201-203.

17 81. Pursuant to California Labor Code sections 201 and 202, PLAINTIFF, putative
18 Class members, and aggrieved employees were entitled to timely payment of all wages earned and
19 unpaid prior to separation at the time of termination. Discharged employees are entitled to payment
20 of all wages earned and unpaid prior to discharge immediately upon termination.

21 82. As a derivative of her claims above, PLAINTIFFS and the Class members allege
22 DEFENDANTS failed to pay them all wages earned and unpaid prior to their termination, in
23 accordance with California Labor Code sections 201 and 202. Specifically, PLAINTIFFS and the
24 Class members allege DEFENDANTS failed to them for meal period premium wage and/or rest
25 period premium wages upon the termination of their employment in violation of Labor Code section
26 201 and 202.

27 83. DEFENDANTS' failure to pay PLAINTIFFS and the Class members all wages
28 earned prior to separation of employment timely in accordance with California Labor Code sections

1 201 and 202 was willful. DEFENDANTS had the ability to pay all wages earned by PLAINTIFFS
2 and the Class members prior to separation of employment in accordance with California Labor
3 Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the
4 requirements of California Labor Code sections 201 and 202. DEFENDANTS' practices include
5 failing to pay at least minimum wage for all time worked, overtime wages for overtime hours
6 worked, meal period premium wages, and rest period premium wages during PLAINTIFFS and the
7 Class members' employment.

8 84. As a result of DEFENDANTS' conduct, PLAINTIFFS and the Class members have
9 suffered damages in an amount, subject to proof, to the extent he was not paid for all wages earned
10 prior to separation.

11 85. As a result of DEFENDANTS' conduct, PLAINTIFFS and the Class members have
12 suffered damages in an amount, subject to proof, to the extent they were not paid all continuation
13 wages owed under California Labor Code section 203.

14 86. Pursuant to either California Labor Code section 201 or 202, PLAINTIFFS are
15 entitled to all wages earned prior to separation of employment that DEFENDANTS did not pay
16 them and interest thereon.

17 87. Pursuant to California Labor Code section 203, PLAINTIFFS and the Class
18 members are entitled to continuation of her wages, from the day her earned and unpaid wages were
19 due upon separation until paid, up to a maximum of thirty (30) days, and interest thereon.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS IN VIOLATION OF**
22 **LABOR CODE SECTION 226**

23 **(By PLAINTIFFS and Members of the Class Against**
24 **All DEFENDANTS and DOES 5 through 100, Inclusive)**

25 88. PLAINTIFFS and the Class members hereby incorporate by reference each and
26 every paragraph, as if fully set forth herein.

27 89. At all times relevant to this Complaint, PLAINTIFFS and the Class members were
28 hourly employees of DEFENDANTS, covered by California Labor Code section 226.

1 90. Pursuant to California Labor Code section 226, subdivision (a), PLAINTIFF,
2 putative Class members, and aggrieved employees were entitled to receive, semimonthly or at the
3 time of each payment of wages, an itemized wage statement accurately stating the following:

4 (1) gross wages earned, (2) total hours worked by the employee,
5 except for any employee whose compensation is solely based on a
6 salary and who is exempt from payment of overtime under
7 subdivision (a) of Section 515 or any applicable order of the
8 Industrial Welfare Commission, (3) the number of piece-rate units
9 earned and any applicable piece rate if the employee is paid on a
10 piece-rate basis, (4) all deductions, provided that all deductions made
11 on written orders of the employee may be aggregated and shown as
12 one item, (5) net wages earned, (6) the inclusive dates of the period
13 for which the employee is paid, (7) the name of the employee and his
14 or her social security number, except that by January 1, 2008, only
15 the last four digits of his or her social security number or an employee
16 identification number other than a social security number may be
17 shown on the itemized statement, (8) the name and address of the
18 legal entity that is the employer, and (9) all applicable hourly rates in
19 effect during the pay period and the corresponding number of hours
20 worked at each hourly rate by the employee.

21 91. PLAINTIFFS and the Class members believe and thereon allege that
22 DEFENDANTS failed to furnish them with proper and accurate itemized written statements
23 including but not limited to the gross wages earned; the net wages earned; and the total hours
24 worked.

25 92. PLAINTIFFS and the Class members allege that DEFENDANTS' failure to furnish
26 PLAINTIFFS and the Class members with proper itemized wage statements was done knowingly
27 and intentionally, and that they suffered injury thereby. Thus, under California Labor Code section
28 226(e), PLAINTIFFS and the Class members are "entitled to recover the greater of all actual
damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one
hundred dollars (\$100.00) for each violation in a subsequent pay period, not exceeding an aggregate
penalty of four thousand dollars (\$4,000.00)..."

 93. PLAINTIFFS, putative Class members, and aggrieved employees are also entitled
to all reasonable attorney's fees and costs of suit pursuant to Labor Code section 226(e).

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1 ***EIGHTH CAUSE OF ACTION***

2 ***Failure to Indemnify for All Employment Related Losses and Expenditures***

3 ***Cal. Lab. Code § 2802***

4 **(By PLAINTIFFS and Members of the Class Against**
5 **All DEFENDANTS and DOES 5 through 100, Inclusive)**

6 94. PLAINTIFFS and the Class members hereby incorporate by reference each and
7 every paragraph, as if fully set forth herein.

8 95. Labor Code section 2802(a) states that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct consequence
10 of the discharge of his or her duties, or of his or her obedience to the directions of the
11 employer...” An employer is prohibited from passing the ordinary business expenses and losses of
12 the employer onto the employee. (Labor Code section 2802).

13 96. DEFENDANTS violated Labor Code section 2802 by impermissibly passing
14 business-related expenses to PLAINTIFFS and class members. These policies, practices, and/or
15 procedures included, but were not limited to, failing to reimburse PLAINTIFFS and Class Members
16 for the uniform that the DEFENDANTS required PLAINTIFFS and other class members to wear
17 and personal items for business use, including cooking utensils and cutlery.

18 97. As a direct and proximate result of DEFENDANTS’ violation of Labor Code section
19 2802, PLAINTIFFS and other class members have suffered irreparable harm and monetary
20 damages entitling them to both injunctive relief and restitution. Plaintiff, on behalf of herself and
21 Class Members, seeks damages and all other relief allowable including indemnification for all
22 employment-related expenses as well as ordinary business expenses incurred by DEFENDANTS
23 and passed on to PLAINTIFFS and other Class Members, pursuant to Labor Code section 2802.

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NINTH CAUSE OF ACTION

UNFAIR COMPETITION

**(By PLAINTIFFS and Members of the Class Against All DEFENDANTS and DOES 5
through 100, Inclusive)**

98. PLAINTIFFS incorporate by reference all paragraphs above as if fully set forth herein.

99. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair competition within the meaning of California Business and Professions Code section 17200. This unfair conduct includes DEFENDANTS' use of policies, practices, and/or procedures which resulted in: failure to provide legally-required meal periods and/or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods and/or pay rest period premium wages; failure to pay minimum wages; failure to pay overtime wages; failure to reimburse business related expenses; failure to provide accurate wage and hour statements; and failure to timely pay all wages due in the course of and upon separation of employment.

100. Due to their unfair and unlawful business practices in violation of the California Labor Code, DEFENDANTS have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to provide compliant meal periods or pay meal period premium wages, authorize or permit all legally required and compliant rest periods or pay rest period premium wages, properly pay minimum and overtime wages; reimburse business related expenses; provide accurate wage and hour statements and timely pay all wages due in the course of and upon separation of employment.

101. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFFS and the Class members have suffered injury in fact and lost money or property, as described in more detail above.

102. Pursuant to Business and Professions Code section 17203, PLAINTIFFS and the Class members are entitled to restitution of all wages and other monies rightfully belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their unlawful and unfair business practices.

1 **TENTH CAUSE OF ACTION**

2 **CONVERSION**

3 **(By PLAINTIFFS and Members of the Class Against**
4 **All DEFENDANTS and DOES 5 through 100, Inclusive)**

5 103. Plaintiffs re-allege and incorporate by reference each and every allegation set forth
6 in the preceding paragraphs.

7 104. Plaintiffs and those similarly situated noticed their tip-outs each night were regularly
8 lower than they had been previously and were consistently at or around \$100/night regardless of
9 the amount of time worked or tips earned.

10 105. Furthermore, Plaintiffs and others similarly situated were required by
11 DEFENDANTS to pay a portion of the gratuities left by patrons to DEFENDANTS' management.
12 Further, DEFENDANTS calculated amounts due to Plaintiff, the putative class members, and
13 aggrieved employees by taking a cut for management and/or other employees who did not actually
14 earn the tips, rather than placing the entire amount actually left by patrons into the tip pool. This
15 caused deductions to be made from servers' wages when the difference between the percentage of
16 the sales assessed against them is more than the amount of gratuities left by patrons, in violation of
17 *Labor Code* §§ 221, 225.5, 558, 558.1, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and IWC Wage
18 Order 5 §§ 3, 4, and 20.

19 106. DEFENDANTS wrongfully withheld from PLAINTIFFS and members of the class
20 and converted gratuities left by patrons and accrued wages in violation of California employment
21 laws and regulations.

22 107. No employer or agent shall collect, take, or receive any gratuity or a part thereof that
23 is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an
24 employee on account of a gratuity, or require an employee to credit the amount, or any part thereof,
25 of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity
26 the sole property of the employee or employees to whom it was paid, given, or left for. Such
27 gratuities belonged to PLAINTIFFS and members of the class at the time the services were
28 provided, and accordingly such gratuities are the property of PLAINTIFFS and members of the

1 class.

2 108. DEFENDANTS knowingly and intentionally required PLAINTIFFS and members
3 of the class to forfeit gratuities and accrued wages.

4 109. DEFENDANTS intentionally converted the gratuities and accrued wages of
5 Plaintiffs and members of the class and utilizing the same for DEFENDANTS' own use and benefit.

6 110. DEFENDANTS converted such gratuities and accrued wages as part of an
7 intentional and deliberate scheme to maximize profits at the expense of PLAINTIFFS and members
8 of the class. As a proximate result of the conversion by DEFENDANTS, and each of them,
9 PLAINTIFFS and members of the class are entitled to the return of the gratuities and accrued wages
10 converted by DEFENDANTS, and each of them, in an amount according to proof at the time of
11 trial.

12 111. PLAINTIFFS and members of the class were injured by DEFENDANTS'
13 intentional conversion of such gratuities and accrued wages. PLAINTIFFS and members of the
14 class are entitled to all monies converted by DEFENDANTS, with interest thereon as well as any
15 and all profits, whether direct or indirect, which DEFENDANTS acquired by their unlawful
16 conversion.

17 112. In committing the foregoing acts, DEFENDANTS were guilty of oppression, fraud
18 or malice, and, in addition to the actual damages caused thereby, PLAINTIFFS are entitled to
19 recover damages for the sake of example and by way of punishing DEFENDANTS.

20 113. PLAINTIFFS and members of the class are further entitled to compensation for the
21 time and money expended in pursuit of the converted property.

22 **ELEVENTH CAUSE OF ACTION**

23 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**

24 **2004, LABOR CODE SECTION 2698, *et seq.***

25 **(By PLAINTIFFS and Members of the Class Against**

26 **All DEFENDANTS and DOES 5 through 100, Inclusive)**

27 114. PLAINTIFFS re-allege and incorporate by reference each and every allegation set
28 forth in the preceding paragraphs.

1 115. During the period beginning one-year preceding the filing of notice with the LWDA,
2 DEFENDANTS violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 221, 225.5, 510, 512,
3 558, 558.1, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2802, and IWC Wage Order 5 §§ 3, 4, and
4 20 as alleged herein.

5 116. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
6 employee, on behalf of herself and other current or former employees, to bring a civil action to
7 recover civil penalties against all DEFENDANTS pursuant to the procedures specified in Labor
8 Code section 2699.3.

9 117. PLAINTIFFS have complied with the procedures for bringing suit specified in
10 Labor Code section 2699.3. On April 1, 2022, AGUALLO filed notice with the Labor and
11 Workforce Development Agency (“LWDA”) and on April 1, 2022, provided notice to
12 DEFENDANTS by certified mail which provided notice of the specific provisions of the Labor
13 Code alleged to have been violated, including the facts and theories to support the alleged
14 violations. True and correct copies of AGUALLO’s notice to the LWDA and to DEFENDANTS
15 is hereto attached as **Exhibit 1**.

16 118. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
17 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
18 within 65 days of the date of the complainant’s written notice and/or DEFENDANTS may attempt
19 to cure for certain violations. The LWDA failed to provide the parties notice within 65 days of the
20 date of AGUALLO’s letter that the LWDA intends to investigate AGUALLO’s claims and/or
21 DEFENDANTS failed to cure any of the alleged violations which could have been cured.

22 119. Pursuant to Labor Code sections 2699(a) and (f), PLAINTIFFS seek, within the one
23 year prior to the mailing of the LWDA letter, civil penalties for DEFENDANTS’ violations of
24 Labor Code 201, 202, 203, 204, 206, 226, 226.7, 221, 225.5, 510, 512, 558, 558.1, 1194, 1194.2,
25 1194.5, 1197, 1197.1, 1198, and 2802, in the following amounts:

- 26 a. For violations of Labor Code sections 201, 202, 203, 226.7, 1198,
27 and 2802; one hundred dollars (\$100) for each employee per pay
28 period for the initial violation and two hundred dollars (\$200) for

- 1 each employee per pay period for each subsequent violation [penalty
2 amounts established by Labor Code section 2699(f)(2)].
- 3 b. For violations of Labor Code section 226, subd. (a), two hundred
4 fifty dollars (\$250) for each employee for each pay period for the
5 initial violation, and for each subsequent violation, one thousand
6 dollars (\$1000) for each underpaid employee for each pay period
7 [penalty amounts established by Labor Code section 226.3].
- 8 c. For violations of Labor Code section 226, subd. (a), seven hundred
9 fifty dollars (\$750) for each employee [penalty amounts established
10 by Labor Code sections 226, subd. (f)].
- 11 d. For violations of Labor Code section 510, 512, and 1194, fifty dollars
12 (\$50) for each employee for each pay period for the initial violation,
13 and for each subsequent violation, one hundred dollars (\$100) for
14 each underpaid employee for each pay period [penalty amounts
15 established by Labor Code section 558].
- 16 e. For violations of Labor Codes sections 1194 and 1197, one hundred
17 dollars (\$100) for each employee per pay period for the initial
18 violation and two hundred dollars (\$200) for each employee per pay
19 period for each subsequent violation [penalty amounts established by
20 Labor Code section 1197.7].

21 120. Pursuant to Labor Code section 2699(g), PLAINTIFFS are entitled to an award of
22 reasonable attorney's fees and costs in connection with their claims for civil penalties.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS, as follows:

- 25 1. Certification of this action as a class action;
- 26 2. Appointment of PLAINTIFFS as Class Representatives;
- 27 3. Appointment of PLAINTIFFS' attorneys as Class Counsel;

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4. That the DEFENDANTS be found to have violated the provisions of the Labor Code and the IWC Wage Orders as to the PLAINTIFFS, Class Members, and aggrieved current and former employees;
5. For any and all legally applicable statutory and civil penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f), 203, 210, 226.3, 558, 1194.2, and 1197.1;
6. For compensatory damages, including, but not limited to, unpaid minimum and overtime wages;
7. For reimbursement of business related expenses;
8. For interest pursuant to all applicable statutes;
9. For all damages available pursuant to all applicable sections of the *Labor Code*;
10. For restitution and/or disgorgement pursuant to *Business & Professions Code* §§ 17200, et seq.;
11. For reasonable attorneys' fees and costs pursuant to all applicable statutes; and
12. For such other and further relief as the Court deems proper.

Respectfully submitted,

Dated: September 24, 2025

JAURIGUE LAW GROUP

By: Sean Shahabi
Michael Jaurigue, Esq.
Sean Shahabi, Esq.
Ali Sachani, Esq.

Attorneys for PLAINTIFF
ANGELICA AGUALLO

1 Date: September 24, 2025

BLACKSTONE LAW, APC

2
3
4 By: /s/ Jasmine Kianfard
5 Barbara DuVan-Clarke, Esq.
6 Danielle GruppChang, Esq.
7 Patricia J. Van Ert, Esq.
8 Alexandra Rose, Esq.
9 Jasmine Y. Kianfard, Esq.
10 *Attorneys for Plaintiff Clemente Garcia*
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Respectfully submitted,

JAURIGUE LAW GROUP

Sean Shahabi

Attorneys for PLAINTIFF
ANGELICA AGUALLO

BLACKSTONE LAW, APC

/s/ Jasmine Kianfard

Barbara DuVan-Clarke, Esq.
Danielle GruppChang, Esq.
Patricia J. Van Ert, Esq.
Alexandra Rose, Esq.
Jasmine Y. Kianfard, Esq.
Attorneys for Plaintiff Clemente Garcia

Exhibit 1



300 W. Glenoaks Boulevard, Suite 300, Glendale, California 91202
Tel (818) 630-7280 | Fax (888) 879-1697 | www.jlglawyers.com

March 31, 2022

Via Online Filing:

California Labor and Workforce Development Agency
800 Capitol Mall
Suite 5000 MIC-55
Sacramento, CA 95814

Via Certified Mail:

Bacari PDR, LLC
c/o Daniel Kronfli, Agent for Service of Process
2316 S. Union Ave.
Los Angeles, CA 90007

Re: Notice of Violations of California Labor Code §§ 201, 203, 221, 225.5, 226, 226.7, 350 – 355, 512, 558, 558.1, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198; Violations of IWC Wage Order No. 5-2001(3), (4), (7), (11), (12) and (20); and Pursuant to the California Private Attorneys General Act (PAGA)

Sir and/or Madam:

This office has been retained to represent Angelica Aguallo (hereinafter “Plaintiff” or “Ms. Aguallo”), on behalf of herself and all others similarly situated, with respect to matters arising out of her and their employment with Bacari PDR, LLC (hereinafter, “Defendant”) in the State of California.

The purpose of this letter is to comply with the statutory exhaustion requirements of Cal. Lab. Code §2699.3 prior to commencing an action pursuant to Private Attorneys General Act of 2004 (“PAGA”), pursuant to Cal. Lab. Code §§ 2698 and 2699, *et seq.* Plaintiff, on behalf of herself and all similarly situated aggrieved employees, intends to file a complaint in the California Superior Court seeking lost wages, interest, penalties, attorneys’ fees, costs of suit, and any and all other relief available under California law, including but not limited to the PAGA. As noted above,

this letter is being copied via Certified Mail to the Defendants via their agents for service of process.¹

Based on the below summary of the facts and legal theories upon which Ms. Aguallo bases her claims, Ms. Aguallo requests that the LWDA regard this Notice as written notice pursuant to Labor Code § 2699.3 of her intent to seek civil penalties against Defendant.

Ms. Aguallo and the Aggrieved Employees

At all relevant times, Ms. Aguallo was a non-exempt employee for Defendant from June 2020 to June 20, 2021. Through this time, she was intentionally denied wages in the form of tips, meal periods, rest periods, final wages upon termination of employment and itemized wage statements.

At all relevant times, Ms. Aguallo was an “aggrieved employee” under PAGA. *See* Cal. Lab. Code § 2699(c) (defining an “aggrieved employee” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”). Ms. Aguallo seeks recovery for the Labor Code and IWC Wage Order violations set forth herein on behalf of herself and other current and former employees, including but not limited to other aggrieved employees who were non-exempt and employed by Defendant in the State of California within one year of the filing of this Notice and who were subject to Labor Code and IWC Wage Order violations.

Labor Code and IWC Wage Order Violations

Conversion:

No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer.

Every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for. Such gratuities belonged to Plaintiffs and members of the class at the time the services were provided, and accordingly such gratuities are the property of Plaintiffs and members of the class.

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¹ To the extent that any of the entities and/or persons receiving a copy of this letter are represented by counsel, please direct any and all inquiries regarding this matter to your attorney. This notice is only being sent to you for purposes of satisfying the administrative exhaustion requirements of the California Labor Code. Please direct any and all communication to this office, and do not communicate with Plaintiff directly.

Plaintiff and those similarly situated noticed their tip-outs each night were regularly lower than they had been previously and were consistently at or around \$100/night regardless of the amount of time worked or tips earned.

Furthermore, Plaintiff and others similarly situated were required by Defendants to pay a portion of the gratuities left by patrons to Defendants' management. Defendants calculated amounts due to Plaintiff and those similarly situated by taking a cut for management and/or other employees who did not actually earn the tips, rather than placing the entire amount actually left by patrons into the tip pool. This caused deductions to be made from servers' wages when the difference between the percentage of the sales assessed against them is more than the amount of gratuities left by patrons, in violation of *Labor Code* §§ 221, 225.5, 558, 558.1, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and IWC Wage Order 5 §§ 3, 4, and 20.

Defendants wrongfully withheld from Plaintiff and those similarly situated and converted gratuities left by patrons and accrued wages in violation of California employment laws and regulations.

Defendants knowingly and intentionally required Plaintiff and those similarly situated to forfeit gratuities and accrued wages and intentionally converted the gratuities and accrued wages of Plaintiffs and those similarly situated and utilizing the same for Defendants' own use and benefit.

Defendants converted such gratuities and accrued wages as part of an intentional and deliberate scheme to maximize profits at the expense of Plaintiff and those similarly situated. As a proximate result of the conversion by Defendants, and each of them, Plaintiff and those similarly situated are entitled to the return of the gratuities and accrued wages converted by Defendants, and each of them, in an amount according to proof at the time of trial.

Plaintiff and those similarly situated were injured by Defendants' intentional conversion of such gratuities and accrued wages. Plaintiff and those similarly situated are entitled to all monies converted by Defendants, with interest thereon as well as any and all profits, whether direct or indirect, which Defendants acquired by their unlawful conversion.

In committing the foregoing acts, Defendants were guilty of oppression, fraud or malice, and, in addition to the actual damages caused thereby, Plaintiff are entitled to recover damages for the sake of example and by way of punishing Defendants.

Plaintiffs and those similarly situated are further entitled to compensation for the time and money expended in pursuit of the converted property.

Failure to Provide Meal Periods or Pay Meal Period Premiums:

Under California law, employees are entitled to an uninterrupted, duty-free 30- minute meal period, when an employee works more than five hours in a workday. Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001(11)(A) ("Wage Order 5"). An employee's first meal

period must commence no later than the end of his/her fifth hour of work. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041 (2012) (“*Brinker*”). An employer must also provide a second 30-minute meal period for an employee working more than ten hours in a workday, to commence no later than the end of his/her tenth hour of work. Cal. Lab. Code §§ 226.7, 512; *Brinker*, 53 Cal. 4th at 1049. An employer who fails to provide a compliant meal period must pay the employee one additional hour of work at the employee’s regular rate of pay. Cal. Lab. Code §§ 226.7, 512; Wage Order 5.

Defendant has failed to maintain a company meal period policy compliant with California law. On a myriad of occasions during the relevant period, Ms. Aguallo and other aggrieved employees were not authorized or permitted to take proper uninterrupted, duty free 30-minute meal periods at the required time. On all such occasions, Defendants also failed to pay meal period premiums in accordance with state law. Upon information and belief, Defendant has adopted a uniform meal period policy and company practices that violate the California Labor Code and applicable Wage Orders to cheat their workers and maximize their own profits.

The aforementioned conduct results in violations of Labor Code §§ 226.7 & 512 and Wage Order 5-2001(11)(A) & (D). These violations subject consolidated to civil penalties under Labor Code §§ 558 & 2699 and Wage Order 5. Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys’ fees. Cal. Lab. Code § 2699(g). Defendant’s owners, directors, officers and/or managing agents may also be held personally liable under Labor Code §§ 558 and 558.1.

Failure to Provide Rest Periods or Pay Rest Period Premiums:

Under California law, employees are entitled to a 10-minute rest period for every 4 hours worked. Cal. Lab. Code §§ 226.7, 512; Wage Order 5. Employees must be entitled to take 10 minutes’ rest for shifts from 3.5 to 6 hours; 20 minutes for shifts of more than 6 hours up to 10 hours; 30 minutes for shifts of more than 10 hours up to 14 hours; and so on. *Brinker*, 53 Cal. 4th at 1029. An employer who fails to provide compliant rest periods must pay the employee one additional hour of work at the employee’s regular rate of pay. Cal. Labor Code §§ 226.7, 512; Wage Order 5-2001(12)(B).

Defendant has failed to maintain a company rest period policy compliant with California law. On a myriad of occasions during the relevant period, Ms. Aguallo and other aggrieved employees were not authorized or permitted to take proper, timely rest periods for every 4 hours worked. On such occasions, Defendants failed to pay rest period premiums in accordance with state law. To the contrary, upon information and belief, Defendants have adopted a uniform rest period policy and company practices that violate the California Labor Code and Wage Order 5-2001 to cheat their workers and maximize their own profits.

The aforementioned conduct results in violations of Labor Code §§ 226.7 & 512 and IWC Wage Order 5-2001(11)(A) and (D). These violations subject Consolidated to civil penalties under Labor Code §§ 558 and 2699 and Wage Order 5. *Each violation results in a separate civil penalty*

for each aggrieved employee for each pay period during the relevant time period. Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g). Defendant's owners, directors, officers and/or managing agents may also be held personally liable under Labor Code §§ 558 and 558.1.

Failure to Pay All Wages Due Upon Termination:

Employers must pay all wages due immediately upon termination. Cal. Lab. Code §§ 201-202. Employers that fail in this obligation are liable for penalties amounting to the employee's regular rate of pay for up to 30 days. Cal. Lab. Code § 203.

Defendant violated this section by failing to pay Ms. Aguallo and similarly aggrieved employees their meal and rest period premiums, as discussed herein. These violations subject Defendants to civil penalties under Labor Code §§ 203 and 2699. *Each violation results in a separate civil penalty for each aggrieved employee for each pay period during the relevant time period.* Cal. Lab. Code § 2699(f). An employer is also liable for costs and attorneys' fees. Cal. Lab. Code § 2699(g). Defendant's owners, directors, officers and/or managing agents may also be held personally liable under Labor Code §§ 558 and 558.1.

Failure to Provide Itemized Wage Statements:

Pursuant to California Labor Code section 226, subdivision (a), Ms. Aguallo, and similarly aggrieved employees, were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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Defendant failed to furnish Ms. Aguallo and similarly aggrieved employees with proper and accurate itemized written statements including but not limited to the gross wages earned; the net wages earned; and the total hours worked.

Defendant's failure to furnish Ms. Aguallo and similarly aggrieved employees with proper itemized wage statements was done knowingly and intentionally, and that they suffered injury thereby. Thus, under California Labor Code section 226(e), Ms. Aguallo and similarly aggrieved employees are "entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars (\$100.00) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00)..."

Ms. Aguallo and similarly aggrieved employees are also entitled to all reasonable attorney's fees and costs of suit pursuant to Labor Code section 226(e).

This Notice is provided pursuant to Labor Code § 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code § 2699.3. If the LWDA elects not to take any action, Ms. Aguallo intends to file a complaint on behalf of herself and all similarly situated aggrieved employees in California Superior Court seeking lost wages, interest, penalties, attorneys' fees, costs, and any other relief available under California law.

If you have any questions, please contact me at the mailing address, telephone number, and/or email address provided above. Thank you for your attention to this matter.

Sincerely,

Barbara DuVan-Clarke

Barbara DuVan-Clarke, Esq.

Senior Managing Employment Attorney, Jaurigue Law Group

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within action; and my business address is 300 W. Glenoaks Boulevard, Suite 300, Glendale, California 91202.

On **September 24, 2025**, I served the document(s) described as

THIRD AMENDED CLASS ACTION COMPLAINT

on the party (or parties) in this action by delivering a true copy (or copies) addressed as follows:

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XXX BY ELECTRONIC SERVICE (CASE ANYWHERE): I caused said document(s) to be delivered electronically to be delivered to the addressee(s) listed above via Case Anywhere. I did not receive any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on **September 24, 2025**, at Glendale, California.


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