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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MATTHEW LOPEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SPECTRUM RESTAURANT
MANAGEMENT GROUP, LLC; ITAL
PIZZA LLC; ITAL PIZZA II, LLC; IL
BAR LLC; ITAL CATERING, LLC;
PHILIP FUSCO; SHOKOUFEH FUSCO;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 30-2022-01249896-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Wages;
2. Failure to Provide Meal Periods or
Compensation in Lieu Thereof;
3. Failure to Permit Rest Periods or Provide
Compensation in Lieu Thereof;
4. Knowing and Intentional Failure to Provide
Accurate Itemized Wage Statements;
5. Waiting Time Penalties;
6. Failure to Reimburse Business Expenses;
7. Conversion of Gratuities;
8. Violations of the Unfair Competition Law;
and
9. Violation of the Private Attorneys General
Act of 2004

Action Filed: March 14, 2022

Trial Date: None Set

JURY TRIAL DEMANDED

1 Plaintiff MATTHEW LOPEZ (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint (“FAC”)
3 against Defendants SPECTRUM RESTAURANT MANAGEMENT GROUP, LLC; ITAL PIZZA
4 LLC; ITAL PIZZA II, LLC; IL BAR LLC; ITAL CATERING, LLC; PHILIP FUSCO;
5 SHOKOUFEH FUSCO and DOES 1 through 50, inclusive (collectively “Defendants”), and alleges
6 as follows:

7 **INTRODUCTION**

8 1. This proposed class action, pursuant to California Code of Civil Procedure section
9 382, is brought by Plaintiff individually and on behalf of all current and former non-exempt
10 employees employed by Defendants in California during the Class Period (collectively the “Class”
11 or “Class Members”). The term “Class Period” is defined as four years prior to the filing of this
12 action to the date of class certification.

13 2. This proposed class action seeks, *inter alia*, unpaid wages (including minimum,
14 regular, overtime, and double time wages), compensation for non-compliant meal periods and rest
15 breaks, waiting time penalties, itemized wage statement penalties, business expense
16 reimbursements, conversion of gratuities, liquidated damages, treble damages, interest, penalties
17 reasonable attorneys’ fees, and costs. Plaintiff’s class action is brought under, *inter alia*, the
18 California Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of the
19 California Code of Regulations, California Business & Professions Code sections 17200 *et seq.*,
20 California Civil Code section 3289, California Code of Civil Procedure section 1021.5, and
21 California Labor Code (“Labor Code”) sections 201-204, 206, 210, 218.6, 226, 226.3, 226.7, 232,
22 232.5, 351, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2800,
23 and 2802.

24 3. Plaintiff also brings this representative action pursuant to the Private Attorneys
25 General Act of 2004, Labor Code sections 2698 *et seq.* (“PAGA”), against Defendants, on behalf
26 of himself individually and other aggrieved employees who are and were employed by Defendants
27 as non-exempt employees throughout California during the PAGA Period. The term PAGA Period
28 is defined as one (1) year prior to Plaintiff’s notice of labor code violations to the Labor and

1 Workforce Development Agency (“LWDA”) and Defendants until judgment.

2 4. Under the California Unfair Competition Law, Business and Professions Code
3 sections 17200 *et seq.* (“UCL”), and pursuant to the class action procedures provided for in this
4 statute, Plaintiff, on behalf of himself and the proposed Class, seeks declaratory relief, injunctive
5 relief, and restitution of all benefits Defendants have received from their employees due to their
6 unlawful business practices, including but not limited to, their failure to timely provide minimum,
7 regular, overtime, and double time compensation due for all hours worked, failure to reimburse
8 business expenses, failure to provide compliant meal periods and rest breaks to their employees or
9 compensation in lieu thereof, and failure to provide accurate itemized wage statements.

10 **JURISDICTION AND VENUE**

11 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
12 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
13 in all cases except those given to other trial courts. All claims alleged herein arise under California
14 law for which Plaintiff seeks relief authorized by California law. Further, this is a class action
15 pursuant to California Code of Civil Procedure section 382 and representative action under PAGA.
16 As such, the monetary damages, restitution, penalties, and other amounts sought by Plaintiff
17 exceeds the minimal jurisdictional limits of the Superior Court and will be established according to
18 proof at trial. The Court also has jurisdiction over certain causes of action pursuant to California
19 Business & Professions Code sections 17203 and 17204, which provide for exclusive jurisdiction
20 for enforcement of this statute in any court of competent jurisdiction.

21 6. This Court has jurisdiction over all Defendants because each Defendant is a citizen
22 of California, a limited liability company organized under the laws of the State of California, a
23 limited liability company authorized to do business in California and registered with the California
24 Secretary of State, does sufficient business in California, has sufficient minimum contacts with
25 California, and/or intentionally avails itself of the laws and markets of California through the
26 promotion, sale, marketing and distribution of its products and/or services in California to render
27 the exercise of jurisdiction by the California courts permissible.

28 //

7. Venue in Orange County is proper under California Business & Professions Code section 17203 and California Code of Civil Procedure section 395.5 because a substantial part of Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants own and operate restaurants in this County, Defendants conduct substantial business in this County, Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain offices, and/or have an agent or agents in this County.

PARTIES

8. Plaintiff is an individual who resides in Orange County, California. On or about September 15, 2022, Defendants hired Plaintiff as a non-exempt hourly employee. Plaintiff's employment with Defendants ended within one (1) year of the filing of this action. Plaintiff's job duties included, *inter alia*, recording orders and serving patrons from the bar and kitchen, preparing alcoholic beverages, maintaining and cleaning the bar and seating area, and tallying bills. Plaintiff worked at Defendants' restaurant located in Laguna Niguel, in the County of Orange.

9. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, SPECTRUM RESTAURANT MANAGEMENT GROUP, LLC (“SRMG”) was and is a California limited liability company. SRMG is in the business of managing and operating restaurants, food markets, and/or providing other food products or services throughout California, including in Orange County. Plaintiff is further informed, believes, and thereon alleges that, at all relevant times, SRMG regularly conducted and conducts business within the State of California and derives substantial revenues from services performed in California. In addition, Plaintiff is informed, believes and thereon alleges that, at all relevant times, SRMG was and is an employer subject to California state wage and hour laws.

10. Plaintiff is informed, believes, and thereon alleges that, at all relevant times, ITAL PIZZA LLC (“ITAL PIZZA”) was and is a California limited liability company. ITAL PIZZA is in the business of managing and operating restaurants, food markets, and/or providing other food products or services throughout California, including in Orange County. Plaintiff is further informed, believes, and thereon alleges that, at all relevant times, ITAL PIZZA regularly conducted and conducts business within the State of California and derives substantial revenues from services

1 performed in California. In addition, Plaintiff is informed, believes and thereon alleges that, at all
2 relevant times, ITAL PIZZA was and is an employer subject to California state wage and hour laws.

3 11. Plaintiff is informed, believes and thereon alleges that, at all relevant times, ITAL
4 PIZZA II, LLC (“ITAL PIZZA II”) was and is a California limited liability company. ITAL PIZZA
5 II is in the business of managing and operating restaurants, food markets, and/or providing other
6 food products or services throughout California, including in Orange County. Plaintiff is further
7 informed, believes, and thereon alleges that, at all relevant times, ITAL PIZZA II regularly
8 conducted and conducts business within the State of California and derives substantial revenues
9 from services performed in California. In addition, Plaintiff is informed, believes and thereon
10 alleges that, at all relevant times, ITAL PIZZA II was and is an employer subject to California state
11 wage and hour laws.

12 12. Plaintiff is informed, believes and thereon alleges that, at all relevant times, IL BAR
13 LLC (“IL BAR”) was and is a California limited liability company. IL BAR is in the business of
14 managing and operating restaurants, food markets, and/or providing other food products or services
15 throughout California, including in Orange County. Plaintiff is further informed, believes, and
16 thereon alleges that, at all relevant times, IL BAR regularly conducted and conducts business within
17 the State of California and derives substantial revenues from services performed in California. In
18 addition, Plaintiff is informed, believes and thereon alleges that, at all relevant times, IL BAR was
19 and is an employer subject to California state wage and hour laws.

20 13. Plaintiff is informed, believes and thereon alleges that, at all relevant times, ITAL
21 CATERING, LLC (“ITAL CATERING”) was and is a California limited liability company. ITAL
22 CATERING is in the business of managing and operating restaurants, food markets, and/or
23 providing other food products or services throughout California, including in Orange County.
24 Plaintiff is further informed, believes, and thereon alleges that, at all relevant times, ITAL
25 CATERING regularly conducted and conducts business within the State of California and derives
26 substantial revenues from services performed in California. In addition, Plaintiff is informed,
27 believes and thereon alleges that, at all relevant times, ITAL CATERING was and is an employer
28 subject to California state wage and hour laws.

1 14. Plaintiff is informed and believes, and thereon alleges, that Defendant PHILIP
2 FUSCO is the managing member, President and/or Chief Executive Officer of Defendants SRMG,
3 ITAL PIZZA, ITAL PIZZA II, IL BAR, and ITAL CATERING. Plaintiff is informed, believes,
4 and thereon alleges, that at all relevant times herein, Mr. FUSCO was involved in the day-to-day
5 operations of Defendants' restaurants, food markets, and/or other food products or services,
6 including hiring, firing, and disciplining employees; enforcing company rules, policies, and
7 practices; working directly at Defendants' restaurants and worksites; and meeting and
8 communicating with employees, among other things. Consequently, Mr. FUSCO violated or caused
9 to be violated the IWC Wage Order provisions regulating minimum wages or hours and days of
10 work, as well as Labor Code sections 203, 204, 226, 226.7, 1194, 1197, and 2802 as explained
11 below. Thus, Mr. FUSCO is personally liable for the Labor Code and IWC Wage Order violations
12 pursuant to Labor Code section 558.1.

13 15. Plaintiff is informed and believes, and thereon alleges, that Defendant
14 SHOKOUFEH AMIRI a.k.a. SHOKOUFEH FUSCO is a member and/or officer of Defendants
15 SRMG, ITAL PIZZA, ITAL PIZZA II, IL BAR, and ITAL CATERING. Plaintiff is informed,
16 believes, and thereon alleges, that at all relevant times herein, Mrs. FUSCO was involved in the
17 day-to-day operations of Defendants' restaurants, food markets, and/or other food products or
18 services, including hiring, firing, and disciplining employees; enforcing company rules, policies,
19 and practices; working directly at Defendants' restaurants and worksites; and meeting and
20 communicating with employees, among other things. Consequently, Mrs. FUSCO violated or
21 caused to be violated the IWC Wage Order provisions regulating minimum wages or hours and
22 days of work, as well as Labor Code Sections 203, 204, 226, 226.7, 1194, 1197, and 2802 as
23 explained below. Thus, Mrs. FUSCO is personally liable for the Labor Code and IWC Wage Order
24 violations pursuant to Labor Code section 558.1.

25 16. Plaintiff is informed, believes and based thereon alleges that Defendants suffered
26 and permitted Plaintiff and the Class Members to work, and/or jointly exercised control over the
27 wages, hours, and/or working conditions of Plaintiff and the Class Members.

28 17. Defendants continue to employ non-exempt employees within California.

1 18. Plaintiff is unaware of the true names and capacities of those defendants identified
2 as DOES 1 through 50. Therefore, Plaintiff identifies those defendants fictitiously. Plaintiff is
3 informed, believes and thereon alleges that at all relevant times each DOE defendant was a parent,
4 sister, or related corporate entity of defendants, or an owner, employee or agent of defendants, and
5 each related entity, and was acting with the knowledge and authorization of each of the other
6 defendants. Plaintiff will seek to amend this FAC to allege the true names and capacities of each
7 DOE defendant when their names have been ascertained and identified. Plaintiff is informed,
8 believes and thereon alleges that each of the defendants sued as DOES 1 through 50 participated
9 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
10 and omissions and some portion of the damages alleged herein.

11 19. Plaintiff is informed, believes and thereon alleges that at all times material hereto,
12 each defendant acted in all respects pertinent to this action as the agent of the other defendant,
13 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
14 each defendant are legally attributable to the other defendant. Furthermore, Defendants in all
15 respects acted as the employer and/or joint employer of Plaintiff and the Class Members.

16 20. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
17 them, at all times material hereto, were the joint employers, parent companies, successor
18 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
19 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants.
20 Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions
21 alleged herein within the course and scope of said relationship(s), and are a proximate cause of
22 Plaintiff's damages as herein alleged.

23 21. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
24 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality
25 and separateness between the individual and the corporation does not exist, as Defendants, and
26 DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
27 herein were mere shells, instrumentalities and conduits through which DOES 1 through 50,
28 inclusive, carried out their business in the business name, exercising complete control and

1 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
2 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES
3 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;
4 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
5 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
6 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
7 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
8 between and among Defendants.

9 22. At all relevant times herein, Defendants were agents of each other and acting within
10 the course and scope of their agency.

11 **CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND**

12 23. Pursuant to California Code of Civil Procedure section 382, Plaintiff brings this
13 action individually and as a class action on behalf of a proposed Class defined as follows:

14 Class:

15 All current and former non-exempt employees employed by Defendants in the State
16 of California within four years prior to the commencement of this action to the date
17 of class certification.

18 24. The Class is also comprised of the following Subclasses:

19 Waiting Time Sub-Class:

20 Those members of the Class who separated from their employment with Defendants
21 within three years prior to the commencement of this action to the date of class
22 certification.

23 Gratuities Sub-Class:

24 Those members of the Class who received or were entitled to receive gratuities from
25 their employment with Defendants within four years prior to the commencement of
26 this action to the date of class certification.

27 25. Plaintiff reserves the right pursuant to California Rules of Court, Rules 3.764 and
28 3.765, to amend or modify the respective definitions of the Class and/or Subclass(es) to provide

1 greater specificity and/or further division into subclasses or limitation to particular issues based on
2 further investigation and discovery.

3 26. This action is brought, and may properly be maintained, as a class action pursuant
4 to California Code of Civil Procedure section 382 because there is a well-defined community of
5 interest in the litigation, and the proposed class is easily ascertainable. This action presents
6 questions of common interest and satisfies the numerosity, commonality, typicality, adequacy,
7 predominance, and superiority requirements of this provision.

8 27. Through this action, Plaintiff alleges Defendants have consistently maintained and
9 enforced against Plaintiff and Class Members unlawful employment practices and policies which
10 violate the Labor Code and IWC Wage Orders.

11 28. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
12 Defendants failed to pay Plaintiff and Class Members all minimum, regular, overtime, and double
13 time wages for all hours worked in violation of the Labor Code and IWC Wage Orders. During the
14 Class Period, Plaintiff and Class Members regularly worked more than eight (8), ten (10) and/or
15 twelve (12) hours per workday and/or over 40 hours per workweek. Defendants failed to pay Class
16 Members for all hours worked at the proper rates by requiring Class Members to complete work-
17 related tasks before and after clocking out. Specifically, Employers required Plaintiff and Class
18 Members to perform work related tasks at closing and after clocking out such as taking out trash,
19 fixing chairs and cushions, cleaning/adjusting silverware and glassware, among other duties and
20 tasks. In addition, Defendants required Plaintiff and Class Members to submit to COVID-19
21 procedures and screening while off-the-clock, such as reviewing emails regarding COVID-19
22 protocols and submitting health questionnaires before each shift. Plaintiff and Class Members were
23 also required by Defendants to answer phone calls from Defendants while they were clocked out
24 of their shifts. Further, Defendants rounded Plaintiff and Class Members' hours worked, including
25 meal periods, thereby depriving them of compensation for time worked during their shifts.
26 Defendants' rounding practice systematically undercompensated Plaintiff and Class Members and
27 favored the employer rather than the employee. As such, Defendants failed to pay Plaintiff and
28 Class Members minimum, regular, overtime, and double time wages for all hours worked, in

1 violation of the Labor Code and applicable IWC Wage Orders.

2 29. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
3 Defendants deprived Plaintiff and Class Members of the opportunity to take all of their statutorily
4 entitled meal periods within the appropriate time intervals or provide compensation in lieu thereof
5 in violation of the Labor Code and IWC Wage Orders. During the Class Period, Defendants failed
6 to provide timely off-duty 30-minute meal periods within the appropriate time intervals to Plaintiff
7 and other Class Members as required by Labor Code section 512 and section 11 of the applicable
8 IWC Wage Orders. Specifically, Plaintiff and Class Members were on-duty during their meal
9 periods and had their meal periods regularly interrupted or late. Due to understaffing, Plaintiff and
10 Class Members would often be required to work through their meal periods. As such, Plaintiff and
11 Class Members regularly had their meal periods interrupted and were restricted to the worksite
12 during their meal periods. In addition, Defendants rounded meal periods in violation of California
13 law. Defendants also failed to provide second meal periods when Plaintiff and Class Members
14 worked over 10 hours. Despite these meal period violations and Plaintiff and Class Members'
15 complaints, Defendants failed to compensate Plaintiff and Class Members with an additional hour
16 of pay at their regular rate for every day in which they suffered a meal period violation.
17 Accordingly, Defendants failed to provide Plaintiff and Class Members with timely, uninterrupted
18 off-duty meal periods for at least 30 minutes when they worked more than five (5) hours and/or 10
19 hours in a workday, and failed to compensate Plaintiff and Class Members with an additional hour
20 of pay at their regular rate of pay for every day in which they were denied a compliant meal period
21 in violation of the Labor Code and applicable IWC Wage Orders.

22 30. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
23 Defendants failed to permit Plaintiff and Class Members to take all of their statutorily entitled 10-
24 minute rest periods for every four (4) hours worked or major fraction thereof or provide
25 compensation in lieu thereof in violation of the Labor Code and IWC Wage Orders. Specifically,
26 Plaintiff and Class Members regularly had their rest breaks shortened, interrupted, and/or missed
27 altogether due to Defendants' practice of prioritizing work demands over taking compliant breaks
28 and due to understaffing. Defendants also failed to adopt and implement a practice of providing

1 third rest breaks when Plaintiff and Class Members worked over 10 hours. Notwithstanding these
2 rest break violations, Defendants failed to compensate Plaintiff and Class Members with an
3 additional hour of pay at their regular rate for every day in which they suffered a rest period
4 violation. Accordingly, Defendants violated the Labor Code and applicable IWC Wage Orders.

5 31. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
6 Defendants failed to reimburse Plaintiff and Class Members for necessary business expenses
7 incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders.
8 During the Class Period, Defendants failed to reimburse Plaintiff and Class Members for all
9 business expenses incurred for Defendants' benefit. For example, Plaintiff and Class Members were
10 required to use their personal cell phones, without reimbursement, to carry out their job duties,
11 including to communicate with Employers and to download and use multiple applications for
12 collecting tips, payroll, and scheduling. Further, Plaintiff and Class Members were required to
13 clean, wash, and iron their uniforms, which were the Employers' property, without any
14 reimbursement for the costs of cleaning, washing, and ironing. Accordingly, Defendants violated
15 the Labor Code and applicable IWC Wage Orders.

16 32. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
17 Defendants willfully failed to timely pay all wages due to Plaintiff and the Waiting Time Subclass
18 upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff
19 and Waiting Time Subclass Members were not paid all wages (including minimum, regular,
20 overtime, and double time wages), reimbursements, meal period premiums, and/or rest period
21 premiums within the required time period in violation of the Labor Code and applicable IWC Wage
22 Orders.

23 33. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
24 Defendants failed to furnish Plaintiff and Class Members with accurate and complete wage
25 statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Class Members
26 received wage statements which did not accurately reflect the gross and net wages earned, total
27 hours worked, and all applicable rates of pay and the corresponding number of hours worked at
28 each pay rate, among other things in violation of the Labor Code and IWC Wage Orders.

1 34. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
2 Defendants converted and unlawfully retained Plaintiff and Gratuities Subclass Members’
3 property—their gratuities. Specifically, Defendants implemented and maintained a policy where
4 Defendants made unlawful deductions and distributions of Plaintiff’s and Class Members earned
5 gratuities.

6 35. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
7 Defendants implemented policies, practices, and rules to restrict Plaintiff and Class Members’
8 speech, protected activity, and the disclosure of information beyond the limited categories of
9 information protected by law. Several provisions of California law, taken together, “establish as a
10 minimum employment standard an employee anti-gag rule.” *Doe v. Google Inc.*, 54 Cal.App.5th
11 948, 961 (2020). For example, California law protects whistleblowers. Labor Code Section
12 1102.5(a) makes it unlawful for an employer to adopt or enforce a policy or rule that prevents
13 employees from disclosing information about reasonably suspected violations of the law to persons
14 with the power to address the problem, *e.g.*, another employee who has the authority to investigate,
15 discover, or correct the legal violation. *Doe*, 54 Cal.App.5th at 958. A contractual provision that
16 restricts an employee’s ability to disclose information related to conditions in the workplace shall
17 include, in substantial form, the following language: “Nothing in this agreement prevents you from
18 discussing or disclosing information about unlawful acts in the workplace, such as harassment or
19 discrimination or any other conduct that you have reason to believe is unlawful.” Government Code
20 section 12964.5(a)(2)(b)(1)(B). California law also protects a broad array of employee speech and
21 activity unrelated to whistleblowing. Subdivision (k) of Labor Code Section 96 prohibits employer
22 retaliation for “‘lawful conduct occurring during nonworking hours away from the employer’s
23 premises,’ so employers do not seek to control the non-work aspects of their employees’ lives.”
24 *Doe*, 54 Cal.App.5th at 958 (citations omitted). Labor Code section 232.5 outlaws employer
25 prohibitions on the disclosure or discussion of working conditions. Business & Professions Code
26 section 16600 states that any agreement in restraint of trade is void. The Cartwright Act provides
27 that any combination in restraint of trade is “unlawful, against public policy and void.” Cal. Bus.
28 & Prof. Code § 16726. Here, Defendants’ unwritten policies, practices, and rules restrict Plaintiff

1 and Class Members' speech, protected activity, and the disclosure of information of Plaintiff and
2 Class Members' working conditions. For example, Defendants maintain a policy of requiring
3 employees to abide by, as a condition of employment and continued employment, a Non-
4 Solicitation Agreement, which provides, among other things, as follows:

5 (a) "Employee will not, for the duration of their employment, approach any
6 customer, affiliate, or business partner of the Company for purposes of seeking employment or
7 business arrangements in competition with the Company line of business. Employee recognizes
8 such information to be classified at trade secrets which are protected by the State of California
9 Business & Professional Code 16600."

10 (b) "Employee will not, for a period of 12 months after termination of their
11 employment, approach any customer, affiliate, or business partner of the Company for purposes of
12 seeking employment or business arrangements in competition with the Company line of business.
13 Employee recognizes such information to be classified at trade secrets which are protected by the
14 State of California Business & Professional Code 16600."

15 (c) "Employee will not, for the duration of their employment, approach, entice,
16 solicit, or contact any individual in current employment at the Company for any reason."

17 (d) "Employee will not, for a period of 12 months following termination of their
18 employment approach, entice, solicit, or contact any individual in current employment at the
19 Company for any reason."

20 36. Defendants' unwritten and written policies, practices, and rules, including but not
21 limited to the Non-Solicitation Policy, restrict Plaintiff and Class Members' speech, protected
22 activity, and the disclosure of information in violation of California law, including but not limited
23 to, the laws set forth in this FAC.

24 37. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
25 described throughout this FAC were willful.

26 **NUMEROSITY**

27 38. The Class is so numerous that joinder of all of its members is impracticable. While
28 the exact number and identities of Class Members are unknown to Plaintiff at this time and can

1 only be ascertained through appropriate discovery, Plaintiff is informed, believes and thereon
2 alleges that the Class consists of more than 100 persons.

3 39. A class action is the only available method for the fair and efficient adjudication of
4 this controversy. The members of the Class are so numerous that joinder of all members is
5 impractical, if not impossible. The identity of Class Members can be ascertained by analysis of
6 Defendants' employee and payroll records.

7 COMMONALITY

8 40. Common questions of fact and law exist as to all members of the Class that
9 predominate over any questions affecting only individual Class Members. These common legal
10 and factual questions include, but are not limited to, the following:

11 (a) Whether Defendants failed to pay Plaintiff and Class Members all minimum,
12 regular, overtime, and double time wages for all hours worked by Plaintiff and Class Members;

13 (b) Whether Defendants rounded the time worked by Plaintiff and Class
14 Members to Defendants' advantage;

15 (c) Whether Defendants failed to provide timely, uninterrupted, off-duty 30-
16 minute meal periods to Plaintiff and Class Members without compensation in lieu thereof;

17 (d) Whether Defendants failed to permit timely, uninterrupted, off-duty 10-
18 minute rest breaks for every four hours or major fraction thereof worked by Plaintiff and Class
19 Members without compensation in lieu thereof;

20 (e) Whether Defendants failed to timely pay Plaintiff and Waiting Time
21 Subclass Members all wages due either immediately upon termination or within 72 hours after
22 resignation;

23 (f) Whether Defendants' conduct was willful;

24 (g) Whether Defendants failed to issue accurate itemized wage statements to
25 Plaintiff and Class Members;

26 (h) Whether Defendants failed to reimburse Plaintiff and Class Members for
27 necessary business expenditures;

28 (i) Whether Defendants substantially interfered with Plaintiff and the Gratuities

1 Subclass Members' property, *i.e.*, the gratuities left for them, by knowingly or intentionally taking
2 possession of Plaintiff and the Gratuities Subclass Members' gratuities and preventing Plaintiff and
3 the Gratuities Subclass Members from having access to all of their gratuities;

4 (j) Whether Defendants intentionally deprived Plaintiff and the Gratuities
5 Subclass Members' of all of the gratuities left for Plaintiff and the Gratuities Subclass Members by
6 making unlawful deductions to their gratuities;

7 (k) Whether Defendants engaged in unfair business practices in violation of
8 California Business & Professions Code sections 17200 *et seq.*; and

9 (l) Additional common questions of law and fact that may develop as the
10 litigation progresses.

11 **TYPICALITY**

12 41. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical
13 of the claims of the Class because: Plaintiff and the Class sustained injuries and damages arising
14 out of and caused by Defendants' unlawful policies and practices; the claims arise out of the same
15 course of conduct by Defendants; Plaintiff's claims are based upon the same legal theories as the
16 claims of the Class; and the legal issues raised under California state law as a result of Defendants'
17 conduct apply equally to Plaintiff and the Class Members.

18 **ADEQUACY OF REPRESENTATION**

19 42. Plaintiff is an adequate representative of the Class, in that his claims (and defenses,
20 if any) are typical of those of the Class. Plaintiff has no conflicts of interest with his fellow Class
21 Members and will be able to fairly and adequately protect the interests of the Class. Plaintiff has
22 the same interests in the litigation of this case as the Class Members; and is committed to vigorous
23 prosecution of this case and has retained competent counsel experienced in class action and wage
24 and hour litigation of this nature.

25 **PREDOMINANCE**

26 43. Defendants have engaged in a common course of wage and hour abuse toward
27 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff and
28 Class Members predominate over any individual issues. Adjudication of these common issues in a

1 single action has important and desirable advantages of judicial economy.

2 **SUPERIORITY OF CLASS ACTION**

3 44. A class action is superior to other available methods for the fair and efficient
4 adjudication of this controversy because individual litigation of the claims of all Class Members is
5 impracticable. Even if every Class Member could afford individual litigation, the court system
6 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
7 cases would proceed. Individualized litigation would also present the potential for varying,
8 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
9 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
10 individual actions by Class Members may establish inconsistent standards of conduct for
11 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
12 the issues presented herein, presents fewer management difficulties, conserves the resources of the
13 parties and the court system, and protects the rights of each Class Member.

14 45. Defendants have acted or refused to act in respects generally applicable to the Class,
15 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
16 herein.

17 **PUBLIC POLICY CONSIDERATIONS**

18 46. Employers in the State of California violate employment and labor laws every day.
19 Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation.
20 Former employees are fearful of bringing actions because they believe their former employers
21 might damage their future endeavors through negative references and/or other means. Class actions
22 provide Class Members who are not named in the action with a type of anonymity that allows for
23 the vindication of their rights while affording them privacy protections.

24 **FIRST CAUSE OF ACTION**

25 **(FAILURE TO PAY ALL WAGES)**

26 **(Against All Defendants)**

27 47. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
28 fully set forth herein.

1 48. At all relevant times, Defendants had a duty to comply with Labor Code sections
2 204, 206, 510, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC Wage Orders and
3 California Code of Regulations.

4 49. Labor Code section 204 and the IWC Wage Orders require timely payment of all
5 wages owed on regularly scheduled paydays at least twice during each calendar month, on days
6 designated in advance by the employer as the regular paydays. All wages earned in excess of the
7 normal work period must be paid no later than the payday for the next regular payroll period.

8 50. Labor Code section 206 provides that in case of a dispute over wages, the employer
9 shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving
10 to the employee all remedies he/she is otherwise entitled to as to any balance claimed.

11 51. At all times relevant, Labor Code section 510, and applicable sections of the
12 California Code of Regulations and the IWC Wage Orders applied to Plaintiff's work with
13 Defendants and continue to apply to Class Members' employment with Defendants. Labor Code
14 section 510 and applicable provisions of the California Code of Regulations and IWC Wage Orders
15 state that any work performed in excess of eight hours in a workday and/or 40 hours in a workweek
16 must be paid at one and one-half times the employee's regular rate of pay. Any work performed in
17 excess of 12 hours in a workday must be compensated at the rate of no less than twice the regular
18 rate of pay for an employee.

19 52. Labor Code section 1182.12 sets forth the minimum hourly wage that must be paid
20 to all employees in California for all hours worked. Local minimum wage ordinances may provide
21 for higher minimum wage rates that must be paid to employees for all hours worked in those locales
22 where each local ordinance is in effect. Labor Code section 1197 affirms that it is unlawful to pay
23 less than the state or local minimum wage, whichever is higher, for any hour of work.

24 53. Labor Code section 1194 provides that any employee receiving less than the legal
25 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
26 in a civil action the unpaid balance of the full amount of the minimum wage or overtime
27 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

28 //

1 54. Labor Code section 1194.2 authorizes the recovery of liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

3 55. Labor Code section 1198 prohibits employers from employing for longer hours or
4 less favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise
5 set by the Labor Commissioner.

6 56. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
7 Plaintiff and Class Members regularly worked over eight (8) hours, 10 hours per workday, and/or
8 12 hours per workday and/or over 40 hours per workweek. Plaintiff and other Class Members also
9 worked over eight (8) hours on the seventh consecutive day of work.

10 57. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
11 Defendants failed to pay Plaintiff and Class Members all wages for hours worked (including
12 minimum, regular, overtime, and double time wages) by requiring COVID-19 screening and
13 procedures while off-the-clock, rounding time worked including rounding meal periods, and
14 requiring off-the-clock work including during meal periods and before and after their shifts without
15 compensation, among other things.

16 58. As a direct and proximate result of Defendants' unlawful conduct, as set forth
17 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
18 of earnings from minimum, regular, overtime, and double time compensation due, in an amount to
19 be established at trial, plus prejudgment interest, attorneys' fees, and costs pursuant to statute.

20 59. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
21 conduct described herein, have committed an "intentional theft of wages in an amount greater than
22 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
23 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
24 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
25 intentionally deprived Plaintiff the Class Members of wages, as defined in Section 200 of the Labor
26 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
27 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
28 due to the employee under the law. Plaintiff and the Class Members are thus entitled to recover

1 from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
2 California Penal Code section 496(c).

3 60. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
4 as described herein and below.

5 **SECOND CAUSE OF ACTION**

6 **(FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU**

7 **THEREOF)**

8 **(Against All Defendants)**

9 61. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
10 fully set forth herein.

11 62. At all relevant times, Defendants had a duty to comply with Labor Code sections
12 226.7 and 512, and the applicable IWC Wage Orders and California Code of Regulations.

13 63. Labor Code section 512 and Section 11 of the IWC Wage Orders prohibit an
14 employer from employing any person for a work period of more than 5 hours per day without
15 providing the employee with a meal period of not less than 30 minutes (commencing before the
16 employee's fifth hour of work), except that if the total work period per day is no more than 6 hours,
17 the meal period may be waived by mutual consent of the employer and employee. A second meal
18 period of not less than 30 minutes is required if an employee works more than 10 hours per day and
19 must begin before the employee's tenth hour of work, except if the total hours worked is no more
20 than 12 hours, the second meal period may be waived by mutual consent of the employer and
21 employee, but only if the first meal period was not waived.

22 64. Section 11 of the applicable IWC Wage Orders state that "[u]nless the employee is
23 relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on
24 duty' meal period and counted as time worked."

25 65. Labor Code section 226.7(b) and the IWC Wage Orders prohibit an employer from
26 requiring any employee to work during a meal period mandated by any California statute,
27 regulation, standard or order. If an employer fails to provide an employee with a meal period in
28 accordance with state law, Labor Code section 226.7(c) and the IWC Wage Orders require that the

1 employer pay the employee one additional hour of pay at the employee's regular rate of
2 compensation for each workday that the meal period is noncompliant.

3 66. Throughout the Class Period, Plaintiff and Class Members did not receive compliant
4 meal periods when working more than five (5) hours and/or 10 hours per workday because their
5 first and second meal periods were missed, late, interrupted, short, and/or not free of all duties. In
6 addition, Defendants rounded Plaintiff's and Class Members' meal periods and meal periods were
7 restricted to the worksite.

8 67. During the Class Period, Defendants failed to pay Plaintiff and Class Members meal
9 period premiums for noncompliant meal periods pursuant to Labor Code section 226.7(b) and the
10 applicable IWC Wage Order and California Code of Regulations.

11 68. Plaintiff is informed, believes, and thereon alleges that Class Members did not
12 voluntarily waive their meal periods.

13 69. As a direct and proximate result of Defendants' unlawful conduct, as set forth
14 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
15 of premium pay for meal period violations and earnings, in an amount to be established at trial, plus
16 prejudgment interest pursuant to statute. To the extent such unpaid premiums or meal period
17 violations are deemed unpaid wages, Plaintiff will also seek attorneys' fees and costs pursuant to
18 statute.

19 70. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
20 conduct described herein, have committed an "intentional theft of wages in an amount greater than
21 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
22 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
23 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
24 intentionally deprived Plaintiff the Class Members of wages, as defined in Section 200 of the Labor
25 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
26 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
27 due to the employee under the law. Plaintiff and the Class Members are thus entitled to recover
28 from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to

1 California Penal Code section 496(c).

2 71. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
3 as described herein and below.

4 **THIRD CAUSE OF ACTION**

5 **(FAILURE TO PERMIT REST PERIODS OR PROVIDE COMPENSATION IN LIEU**
6 **THEREOF)**

7 **(Against All Defendants)**

8 72. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
9 fully set forth herein.

10 73. At all relevant times, Defendants had a duty to comply with Labor Code section
11 226.7 and the applicable IWC Wage Orders and California Code of Regulations.

12 74. Labor Code section 226.7(a) states “No employer shall require any employee to
13 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
14 Commission.”

15 75. Section 12 of the applicable IWC Wage Order provides in relevant part that:

16 (A) Every employer shall authorize and permit all employees to
17 take rest periods, which insofar as practicable shall be in the middle
18 of each work period. The authorized rest period time shall be based
19 on the total hours worked daily at the rate of ten (10) minutes net rest
20 time per four (4) hours or major fraction thereof. However, a rest
21 period need not be authorized for employees whose total daily work
time is less than three and one-half (3 1/2) hours. Authorized rest
period time shall be counted as hours worked for which there shall be
no deduction from wages.

22 (B) If an employer fails to provide an employee a rest period in
23 accordance with the applicable provisions of this order, the employer
24 shall pay the employee one (1) hour of pay at the employee’s regular
rate of compensation for each work day that the rest period is not
provided.

25 76. Plaintiff is informed, believes, and thereon alleges that during the Class Period,
26 Plaintiff and Class Members worked in excess of three-and-a-half (3.5) hours, six (6) hours, and/or
27 10 hours per workday.

28 77. During the Class Period, Plaintiff and Class Members did not receive compliant 10-

1 minute rest periods for every four hours worked or major fraction thereof because rest breaks were
2 missed, interrupted, shortened, restricted to the worksite, and/or not free of all duties.

3 78. During the Class Period, Defendants failed to pay Plaintiff and Class Members rest
4 period premiums for noncompliant rest periods pursuant to Labor Code section 226.7(b) and the
5 applicable IWC Wage Order.

6 79. As a direct and proximate result of Defendants' unlawful conduct, as set forth
7 herein, Plaintiff and Class Members have sustained and continue to sustain damages, including loss
8 of earnings, in an amount to be established at trial plus prejudgment interest pursuant to statute. To
9 the extent such unpaid premiums or rest period violations are deemed unpaid wages, Plaintiff will
10 also seek attorneys' fees and costs pursuant to statute.

11 80. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
12 conduct described herein, have committed an "intentional theft of wages in an amount greater than
13 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
14 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
15 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
16 intentionally deprived Plaintiff the Class Members of wages, as defined in Section 200 of the Labor
17 Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by
18 unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is
19 due to the employee under the law. Plaintiff and the Class Members are thus entitled to recover
20 from Defendants treble damages and costs, including reasonable attorneys' fees, pursuant to
21 California Penal Code section 496(c).

22 81. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
23 as described herein and below.

24 **FOURTH CAUSE OF ACTION**

25 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

26 **(Against All Defendants)**

27 82. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
28 fully set forth herein.

1 83. At all relevant times, Defendants had a duty to comply with Labor Code section 226
2 and the applicable IWC Wage Orders and California Code of Regulations.

3 84. Labor Code section 226(a) requires that, semimonthly or at the time of each payment
4 of wages, employers must furnish each employee with an accurate itemized wage statement in
5 writing that accurately shows (1) gross wages earned, (2) total number of hours worked, (3) the
6 number of any piece-rate units earned and all applicable piece rates, (4) all deductions made from
7 wages, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name and last four
8 digits or employment identification number of the employee, (8) the name and address of the legal
9 entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding
10 number of hours worked at each hourly rate.

11 85. Labor Code section 226(e)(1) authorizes an employee suffering injury as a result of
12 a knowing and intentional failure by an employer to provide an accurate itemized wage statement
13 to recover the greater of all actual damages or \$50 for the initial pay violation and \$100 for each
14 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee,
15 in addition to an award of costs and attorneys' fees.

16 86. Section 7 of the IWC Wage Orders requires Defendants to maintain time records
17 showing, among other things, when the employee begins and ends each work period, meal periods
18 taken, and total daily hours worked in an itemized wage statement, and must show all deductions
19 and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff
20 and Class Members. Plaintiff is informed, believes, and thereon alleges that Defendants have
21 knowingly and intentionally failed to comply with the IWC Wage Orders.

22 87. Throughout the Class Period, Defendants provided wage statements that did not
23 accurately reflect the total number of hours worked by Plaintiff and Class Members at each
24 corresponding pay rate, and the gross and net wages earned, among other things, making it difficult
25 for Plaintiff and Class Members to determine whether they were paid correctly for all hours worked,
26 which deductions were made, and the extent of any underpayment. Plaintiff has had to file this
27 lawsuit in order to determine the extent of the underpayment of wages, thereby causing Plaintiff to
28 incur expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these

1 costs had Defendants provided the accurate wages earned. This has also delayed Plaintiff's ability
2 to demand and recover the underpayment of wages from Defendants. Defendants' violations of
3 Labor Code section 226(a) prevented Plaintiff and Class Members from knowing, understanding
4 and disputing the wages paid to them, and resulted in an unjustified economic enrichment to
5 Defendants.

6 88. Defendants knowingly and intentionally failed to provide accurate, itemized wage
7 statements to Plaintiff and Class Members, and as such Plaintiff and Class Members are deemed to
8 have suffered injury in accordance with Labor Code section 226. Plaintiff and the Class Members
9 are therefore entitled to the damages and penalties provided for under Labor Code section 226(e).

10 89. Plaintiff and Class Members are also entitled to injunctive relief under Labor Code
11 section 226(h), compelling Defendants to comply with Labor Code section 226, and seek the
12 recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

13 90. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
14 as described herein and below.

15 **FIFTH CAUSE OF ACTION**
16 **(WAITING TIME PENALTIES)**
17 **(Against All Defendants)**

18 91. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
19 fully set forth herein.

20 92. At all relevant times, Defendants had a duty to comply with Labor Code
21 sections 201, 202, and 203, and the applicable IWC Wage Orders and California Code of
22 Regulations. Defendants failed to comply with these final paycheck requirements with respect to
23 Plaintiff and Waiting Time Subclass Members.

24 93. Labor Code section 201 requires that if an employer discharges an employee, the
25 wages earned and unpaid at the time of discharge are due and payable immediately.

26 94. Labor Code section 202 requires that if "an employee not having a written contract
27 for a definite period" quits, the employee's wages shall become due and payable no later than
28 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention

1 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

2 95. Labor Code section 203 provides that if an employer willfully fails to pay, without
3 abatement or reduction, any wages of an employee who is discharged or quits, the wages of the
4 employee shall continue as a penalty from the due date thereof at the same rate until paid or until
5 an action therefor is commenced, but that the wages shall not continue for more than 30 days per
6 employee.

7 96. Plaintiff is informed, believes, and thereon alleges, that at all relevant times,
8 Defendants willfully failed to timely pay Plaintiff and Waiting Time Subclass Members all of their
9 unpaid wages earned, including, but not limited to, minimum, regular, overtime, and double time
10 wages, compensation for non-compliant meal periods and rest periods, and unpaid expense
11 reimbursements upon separation of employment. Plaintiff and Waiting Time Subclass Members
12 are entitled to timely compensation upon separation of their employment for any outstanding
13 unpaid wages, reimbursements, and premiums but to date have not received such compensation
14 from Defendants, therefore entitling them to penalties pursuant to Labor Code section 203.

15 97. As a consequence of Defendants' willful conduct in failing to pay all earned wages,
16 Plaintiff and Waiting Time Subclass Members are entitled to up to 30 days' wages as a penalty for
17 Defendants' failure to timely pay wages upon separation of employment, in addition to prejudgment
18 interest, attorneys' fees, and costs in amounts that will be established at trial.

19 98. WHEREFORE, Plaintiff and the Waiting Time Subclass Members he seeks to
20 represent request relief as described herein and below.

21 **SIXTH CAUSE OF ACTION**

22 **(FAILURE TO REIMBURSE BUSINESS EXPENSES)**

23 **(Against All Defendants)**

24 99. Plaintiff incorporates by reference all previous paragraphs of this FAC as though
25 fully set forth herein.

26 100. At all relevant times, Defendants had a duty to comply with Labor Code
27 sections 2800 and 2802 and the applicable IWC Wage Orders and California Code of Regulations.

28 101. Labor Code section 2800 requires employers to indemnify employees for losses

1 caused by the employer's want of ordinary care. To the extent Defendants claim that Plaintiff and
2 Class Members failed to request, demand, notify or otherwise seek reimbursement for their
3 expenses and losses, Defendants were obligated to nevertheless indemnify Plaintiff and Class
4 Members due to their own negligence.

5 102. Labor Code section 2802(a) requires that employers indemnify and reimburse
6 employees for all business expenses, which are defined as all necessary expenditures or losses
7 incurred by the employee in direct consequence of the discharge of the employee's duties or
8 otherwise incurred based on the employee's obedience to the employer's directions. Labor Code
9 section 2802(b) authorizes employees to recover in a court action interest which shall accrue from
10 the date on which the employee incurred the necessary expenditure or loss. Labor Code
11 section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor
12 Code section 2802, to also recover attorneys' fees and costs.

13 103. During the Class Period, Plaintiff and Class Members were required to use their
14 personal cellular phones for work purposes, such as communicating with supervisors and
15 downloading and using work related applications, without reimbursement for a reasonable portion
16 of their cellular phone bills. Plaintiff and Class Members were also required to clean, wash, and
17 iron their uniforms, which were the Employers' property, without any reimbursement for the costs
18 of cleaning, washing, and ironing.

19 104. Defendants have unfairly and unlawfully violated Labor Code sections 2800 and
20 2802, and the applicable IWC Wage Orders by failing to reimburse Plaintiff and Class Members
21 for all of their out-of-pocket business expenses incurred in the discharge of their job duties.

22 105. As a consequence of Defendants' willful conduct, Plaintiff and Class Members have
23 sustained damages for unreimbursed out-of-pocket business expenses, due in an amount to be
24 established at trial, plus prejudgment interest, attorney's fees, and costs pursuant to statute.

25 106. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
26 as described herein and below.

27 //

28 //

SEVENTH CAUSE OF ACTION
(CONVERSION OF GRATUITIES)
(Against All Defendants)

107. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

108. California Labor Code section 350(e) provides that: “‘Gratuity’ includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron.”

109. California Labor Code Section 351 provides that: “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 hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.”

110. Plaintiff and the Gratuities Subclass Members owned and had a right to possess all of the gratuities left for them during the Class Period. Lab. Code § 351 (“Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.”).

111. During the Class Period, Defendants substantially interfered with Plaintiff and the Gratuities Subclass Members’ property, *i.e.*, the gratuities left for them, by knowingly or intentionally taking possession of Plaintiff and the Gratuities Subclass Members’ gratuities and preventing Plaintiff and the Gratuities Subclass Members from having access to all of their

1 gratuities. For example, Defendants intentionally deprived Plaintiff and the Gratuities Subclass
2 Members' of all of the gratuities left for Plaintiff and the Gratuities Subclass Members by making
3 unlawful deductions to their gratuities during the Class Period.

4 112. During the Class Period, Plaintiff and the Gratuities Subclass Members did not
5 consent to Defendants' interference with the gratuities left for Plaintiff and the Gratuities Subclass
6 Members.

7 113. As a direct and proximate result of Defendants' conduct, Plaintiff and the Gratuities
8 Subclass Members have sustained harm because Plaintiff and the Gratuities Subclass Members
9 have been denied property rights in the gratuities left for them. Plaintiff and the Gratuities Subclass
10 Members are thus entitled to all gratuities left for them that are being retained by Defendants in
11 addition to prejudgment interest, attorneys' fees, and costs in an amount to be established at trial.

12 114. Plaintiff is informed, believes, and thereon alleges that Defendants, through their
13 conduct described herein, have committed an "intentional theft of wages in an amount greater than
14 nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty
15 dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month
16 period" within the meaning of California Penal Code section 487m. Specifically, Defendants have
17 intentionally deprived Plaintiff and the Gratuities Subclass Members of gratuities, as defined in
18 Section 350 of the Labor Code by unlawful means, with the knowledge that the gratuities are due
19 to Plaintiff and the Gratuities Subclass Members under the law. Plaintiff and the Gratuities Subclass
20 Members are thus entitled to recover from Defendants treble damages and costs, including
21 reasonable attorneys' fees, pursuant to California Penal Code section 496(c).

22 115. In wrongfully depriving Plaintiff and the Gratuities Subclass Members of property
23 rights in the gratuities left for them, each Defendant acted with oppression, fraud, and/or malice.
24 Plaintiff and the Gratuities Subclass Members are thus entitled to exemplary and punitive damages
25 in an amount commensurate with Defendants' ability to pay and to deter future oppressive,
26 fraudulent, and/or malicious conduct pursuant to California Civil Code section 3294.

27 116. WHEREFORE, Plaintiff and the Gratuities Subclass Members he seeks to represent
28 request relief as described herein and below.

EIGHTH CAUSE OF ACTION
(UNFAIR BUSINESS PRACTICES)
(Against All Defendants)

117. Plaintiff incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

118. California Business & Professions Code sections 17200, *et seq.* prohibits unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

119. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and Defendants' competitors. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure section 1021.5.

120. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code sections 17200, *et seq.*

121. A violation of Business and Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law.

122. Plaintiff brings this action on behalf of himself and all members of the general public, including the Class Members, pursuant to the UCL. Defendants' conduct alleged below constitutes false, fraudulent, unlawful, unfair, and/or deceptive business practices, in violation of the UCL. Defendants' policies and practices have violated state law in at least the following respects:

(a) Failing to pay all minimum, regular, overtime, and double time wages due to Plaintiff and Class Members in violation of Labor Code sections 204, 206, 510, 1182.12, 1194, 1194.2, 1197, and 1198;

(b) Failing to provide compliant meal periods or compensation in lieu thereof in violation of Labor Code sections 226.7 and 512;

(c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof in violation of Labor Code section 226.7;

1 (d) Intentionally failing to provide Plaintiff and Class Members with accurate
2 itemized wage statements in violation of Labor Code section 226;

3 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time
4 Subclass Members upon separation of employment in violation of Labor Code sections 201, 202,
5 and 203;

6 (f) Failing to reimburse Plaintiff and Class Members all necessary business
7 expenses in violation of Labor Code sections 2800 and 2802;

8 (g) Violations of the IWC Wage Orders for the same conduct above;

9 (h) Using policies, practices, and rules, including their Non-Solicitation Policy,
10 to restrict Plaintiff and Class Members' speech, protected activity, and the disclosure of information
11 beyond the limited categories of information protected by law; and

12 (i) Unlawfully collecting, distributing, deducting from, and retaining gratuities
13 belonging to Plaintiff and Gratuities Subclass Members in violation of Labor Code sections 351
14 and 353.

15 123. Defendants' course of conduct, acts, and practices in violation of California law
16 mentioned above each constitute a separate and independent violation of the UCL. Defendants'
17 conduct described herein violates the policy or spirit of such laws or otherwise significantly
18 threatens or harms competition. The substantial harm to Plaintiff and Class Members in being
19 wrongfully denied earned wages, meal and rest periods, premium pay, and reimbursements
20 outweighs the utility, if any, of Defendants' policies or practices and, therefore, Defendants' actions
21 described herein constitute unfair business practices or acts within the meaning of the UCL.

22 124. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking
23 statutory and injunctive relief to stop the misconduct of Defendants, as complained herein, and to
24 compel restitution and disgorgement of all profits (i.e., unpaid wages, reimbursements, and
25 premiums, etc.) obtained by Defendants through the unfair and unlawful business practices
26 described herein pursuant to, *inter alia*, Business and Professions Code sections 17202, 17203, and
27 17208. Under the circumstances alleged, it would be inequitable and result in a miscarriage of
28 justice for Defendants to continue to retain the property of Plaintiff and Class Members.

125. Defendants' failure to adopt and implement policies in accordance with and/or adhere to these laws, all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair competitive advantage for Defendants against its competitors, thereby constituting an unfair business practice, as set forth in the UCL.

126. Pursuant to California Business and Professions Code section 17203, as a direct and proximate result of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of all employees similarly situated, is entitled to equitable and injunctive relief, against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff also seeks an order enjoining Defendants to cease and desist from engaging in the practices described herein.

127. Plaintiff and Class Members also request any other such legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including an injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent practices alleged in this Complaint.

128. As a result of Defendants' unlawful and unfair business practices, Plaintiff and Class Members are entitled to and seek other appropriate relief available under California Business & Professions Code sections 17200 *et seq.* Plaintiff, on behalf of himself and the Class, also seeks recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by California Code of Civil Procedure section 1021.5.

129. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

NINTH CAUSE OF ACTION

(VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

(Against All Defendants)

130. Plaintiff hereby re-alleges and incorporates by reference all previous paragraphs of this FAC as though fully set forth herein.

131. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged

1 to have been violated, and after receiving notice from the LWDA of its intention not to investigate
2 or after 65 days have passed without notice from the LWDA.

3 132. On March 7, 2022, Plaintiff gave written notice of the specified provisions alleged
4 to have been violated, including the facts and theories to support the alleged violations, as required
5 by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants
6 and to the LWDA by electronically filing the notice via the Department of Industrial Relations'
7 website. More than 65 days has passed since Plaintiff submitted his PAGA notice to the LWDA
8 without notice from the LWDA. Accordingly, Plaintiff may amend his initial Complaint to add a
9 PAGA cause of action.

10 133. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
11 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
12 divisions, commissions, boards, agencies or employees for violation of the code may, as an
13 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
14 himself and other current or former employees pursuant to the procedures specified in Labor Code
15 section 2699.3.

16 134. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
18 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
19 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
20 pay period in which Defendants violated these provisions of the Labor Code.

21 135. Defendants' conduct violates numerous Labor Code sections, including, but not
22 limited to, the following:

23 (a) Violation of Labor Code sections 201-204, 206, 210, 510, 558, 1182.12,
24 1194, 1197, 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
25 regular, overtime, and double time wages) owed to Plaintiff and other aggrieved employees during
26 employment and upon separation of employment as herein alleged;

27 (b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal
28 periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed

1 meal periods as herein alleged;

2 (c) Violation of Labor Code sections 226.7 for failure to permit rest breaks to
3 Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods
4 as herein alleged;

5 (d) Violation of Labor Code sections 226 and 226.3 for failure to provide
6 accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

7 (e) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain
8 accurate records regarding the employment of Plaintiff and other aggrieved employees as herein
9 alleged; and

10 (f) Violation of Labor Code sections 2800 and 2802 for failure to reimburse
11 Plaintiff and other aggrieved employees for business expenses.

12 (g) Violation of Labor Code sections 232, 232.5, 432.5 and 1197.5 for using
13 policies, practices, and rules, including their Non-Solicitation Policy, to restrict Plaintiff and other
14 aggrieved employees' speech, protected activity, and the disclosure of information beyond the
15 limited categories of information protected by law.

16 (h) Violation of Labor Code section 351 for failure to pay all amounts owed to
17 Plaintiff and other aggrieved employees for gratuities earned during regular working hours.

18 136. Labor Code Section 226.3 provides: "[a]ny employer who violates subdivision (a)
19 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
20 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the employee a
22 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
23 The civil penalties provided for in this section are in addition to any other penalty provided by law."

24 137. Further, Labor Code section 558(a) provides "[a]ny employer or other person acting
25 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
26 provision regulating hours and days of work in any order of the Industrial Welfare Commission
27 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
28 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each

1 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
2 for which the employee was underpaid.”

3 138. Labor Code Section 1174.5 provides a \$500 penalty for an employer’s failure to
4 maintain accurate and complete payroll records showing the hours worked daily by and the wages
5 paid to employees.

6 139. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
7 either individually or as an officer, agent, or employee of another person, who pays or causes to be
8 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
9 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
10 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
11 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
12 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
13 pay period for which the employee is underpaid regardless of whether the initial violation is
14 intentionally committed.

15 140. As set forth above, Defendants have violated numerous provisions of the Labor
16 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
17 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the
18 underpaid employees, and the State of California.

19 141. Plaintiff is an “aggrieved employee” because he was employed by the alleged
20 violators and had one or more of the alleged violations committed against him, and therefore is
21 properly suited to represent the interests of all other aggrieved employees.

22 142. Plaintiff has exhausted the procedural requirements under Labor Code section
23 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself
24 and all other aggrieved employees under the PAGA.

25 143. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
26 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
27 above.

28

144. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the proposed Class, the aggrieved employees, and the State of California, prays for judgment and the following specific relief against Defendants, jointly and severally, as follows:

1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses as appropriate under California Code of Civil Procedure section 382;
2. That Plaintiff be appointed as the Class Representative;
3. That Alami Law Group be appointed as Class Counsel for all purposes;
4. For compensatory damages in an amount according to proof with interest thereon;
5. For such general, economic, and/or special damages in an amount according to proof with interest thereon;
6. For damages, monetary relief, wages, premiums, reimbursements, benefits and penalties, including interest thereon;
7. For waiting time penalties pursuant to Labor Code section 203;
8. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;
9. For the amounts provided for in Labor Code section 226.7;
10. For treble damages pursuant to California Penal Code section 496(c);
11. For exemplary and punitive damages in an amount commensurate with Defendants' ability to pay and to deter future oppressive, fraudulent, and/or malicious conduct in connection with the Seventh Cause of Action for Conversion of Gratuities;
12. For attorneys' fees, costs of suit, including expert fees, and interest pursuant to Labor Code sections 218.5, 218.6, 226, 1194, 2802, 2698 *et seq.* California Code of Civil Procedure section 1021.5, and California Penal Code section 496(c);
13. For restitution to Plaintiff and Class Members of all money and property unlawfully acquired by Defendants through unfair or unlawful business practices pursuant to Business and

1 Professions Code sections 17200 *et seq.*;

2 14. For an order requiring Defendants to restore and disgorge all funds to each employee
3 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
4 and, therefore, constituting unfair competition under Business and Professions Code sections
5 17200, *et seq.*;

6 15. For an order prohibiting Defendants from seeking to enforce their illegal Non-
7 Solicitation Policy;

8 16. For an order requiring Defendants to notify its current and former employees of the
9 Court's injunction, that the Non-Solicitation Policy is illegal and unenforceable, and that employees
10 have the right to engage in whistleblowing, competition, and speech consistent with California law;

11 17. For an order requiring Defendants to modify their Non-Solicitation Policy to bring
12 it into compliance with California law;

13 18. For an order requiring Defendants to verify their compliance with the Court's
14 injunction(s) through independent monitoring or other appropriate means;

15 19. For liquidated damages pursuant to Labor Code section 1194.2;

16 20. For permanent injunctive relief described in the UCL cause of action;

17 21. For prejudgment interest on all sums recovered pursuant to Labor Code
18 section 218.6, California Civil Code sections 3287 and 3289, and applicable law;

19 22. For post judgment interest on all amounts awarded to Plaintiff and Class Members
20 as provided by law;

21 23. A declaratory judgment that the practices complained of herein are unlawful under
22 California law;

23 24. Such other equitable relief as the Court may deem proper;

24 25. For PAGA penalties; and

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1 26. An award of such other and further relief as this Court may deem appropriate.

2
3 Dated: May 12, 2022

ALAMI LAW GROUP

4
5
6 By: _____

David Alami

7
8 Attorneys for Plaintiff MATTHEW LOPEZ

9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

12
13 Dated: May 12, 2022

ALAMI LAW GROUP

14
15
16 By: _____

David Alami

17 Attorneys for Plaintiff MATTHEW LOPEZ