

1 Michael Nourmand, Esq. (SBN 198439)
James A. De Sario, Esq. (SBN 262552)
2 **THE NOURMAND LAW FIRM, APC**
8822 West Olympic Boulevard
3 Beverly Hills, California 90211
Telephone (310) 553-3600
4 Facsimile (310) 553-3603

5 Attorneys for Plaintiff,
LISET PEREZ, on behalf of herself and
6 all others similarly situated

FILED
Superior Court of California
County of Los Angeles
11/01/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: K. Martinez Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE
10

11 LISET PEREZ, on behalf of herself and all
others similarly situated,

12
13 Plaintiffs,

14 v.
15

16 CHIK ENTERPRISES, a California
corporation; and DOES 1 through 100,
17 Inclusive

18 Defendants.
19
20
21
22
23
24
25
26
27
28

CASE NO.: 22STCV17088

FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

1. FAILURE TO PAY OVERTIME WAGES;
 2. FAILURE TO PAY MINIMUM WAGES;
 3. FAILURE TO PROVIDE REST PERIODS;
 4. FAILURE TO PROVIDE MEAL PERIODS;
 5. FAILURE TO PAY ALL WAGES UPON TERMINATION;
 6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
 7. VIOLATION OF LABOR CODE §2802;
 8. UNFAIR COMPETITION; and
 9. CIVIL PENALTIES LABOR CODE §2699
- DEMAND FOR JURY TRIAL

COMES NOW plaintiff LISET PEREZ (hereinafter “Ms. Perez” and/or “Plaintiff”) on behalf of herself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by defendant CHIK ENTERPRISES and any parent, subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), within the State of California.

2. For at least four (4) years prior to the filing of this action and through to the present Defendants have had a pattern and practice of failing to pay wages, including overtime wages, on multiple occasions to Plaintiff and other non-exempt employees in the State of California, for pre and post shift off-the-clock work and/or for requiring employees to work during their 30 minute meal periods.

3. For at least for (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to provide Plaintiff and similarly situated employees or former employees within the State of California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide compensation for such unprovided rest periods as required by California wage and hour laws.

4. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a pattern and practice of failing on multiple occasions to provide Plaintiff and other similarly situated employees or former employees within the State of California a thirty (30) minute uninterrupted meal period for days on which the employees worked more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods for days on which the employees worked in excess of ten (10) hours in a work day, and failing to provide compensation for such unprovided meal periods as required by California wage and hour laws.

///

///

5. For at least for (4) years prior to the filing of this action and continuing through the present, Defendants have failed to pay Plaintiff and other similarly situated employees the full amount of their wages owed to them upon termination and/or resignation as required by Labor Code §§ 201 or 202, have failed to issue accurate itemized wage statements as required by Labor Code § 226 and have failed to reimburse for business related expenses as required by Labor Code §2802.

6. Plaintiff, on behalf of herself and all other similarly situated employees, brings this action pursuant to, including but not limited to, California Labor Code §§ 200, 201, 202, 203, 210, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, 1197, 1197.1, 1199, 2699 et seq., 2802 and California Code of Regulations, Title 8, §11070, seeking unpaid overtime and minimum wages, premium wages for missed meal and rest periods, reimbursement for business related expenses, civil and statutory penalties, and reasonable attorney's fees and costs.

7. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to California Business & Professions Code §§17200-17208 also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

PARTIES

A. Plaintiff

8. Venue as to each defendant is proper in this judicial district, pursuant to California Code of Civil Procedure §395. Defendants operate and do business in the State of California and within San Bernardino County, and each defendant is within the jurisdiction of this court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California. Defendants employ numerous Class Members in the State of California.

9. Plaintiff, Ms. Perez, is a resident of California. At all relevant times herein, she has been employed by Defendants as a non-exempt employee in California.

///

///

///

1 **B. Defendants**

2 10. Defendant, CHIK ENTERPRISES, a California corporation operates multiple
3 Popeyes Louisiana Kitchen Restaurants in the State of California.

4 11. Defendant CHIK ENTERPRISES has employed Plaintiff and similarly situated
5 persons within the State of California.

6 12. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
8 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
9 §474.

10 13. Plaintiff is informed and believes, and based thereon alleges, that each of the
11 defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
12 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
13 names and capacities of the defendants designated hereinafter as DOES when such identities
14 become known.

15 14. Plaintiff is informed and believes, and based thereon alleges, that each defendant
16 acted in all respect pertinent to this action as the agent of the other defendant, carried out a joint
17 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
18 legally attributable to the other defendants.

19 **FACTUAL BACKGROUND**

20 15. Plaintiff and other similarly situated employees have not been paid wages,
21 including overtime wages, for all time worked on multiple occasions, as a result of pre and post
22 shift off-the-clock work and/or for being required to work through 30 minute meal periods.

23 16. Defendants have had a pattern and practice of on multiple occasions failing to
24 provide Plaintiff and other similarly situated employees or former employees within the State of
25 California a thirty (30) minute uninterrupted meal period for days on which the employees worked
26 more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods
27 for days on which the employees worked in excess of ten (10) hours in a work day, and on
28 multiple occasions failing to provide compensation for such unprovided meal periods. Plaintiff

1 contends that she and other similarly situated employees or former employees within the State of
2 California would be prevented and discouraged from taking their meal periods, as required under
3 the law, due to, including but not limited to, being understaffed at the restaurant.

4 17. Defendants have had a pattern and practice of on multiple occasions failing to
5 provide Plaintiff and similarly situated employees or former employees within the State of
6 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
7 thereof and on multiple occasions failing to provide compensation for such unprovided rest
8 periods as required by California wage and hour laws. Plaintiff contends that she and other
9 similarly situated employees or former employees within the State of California would be
10 prevented and discouraged from taking their rest periods, as required under the law, due to,
11 including but not limited to, being understaffed at the restaurant.

12 18. Plaintiff and other similarly situated employees or former employees at all times
13 pertinent hereto were not exempt from the overtime and meal and rest break provisions of
14 California law, and the implementing rules and regulations of the IWC California Wage Orders.

15 19. Defendants have failed to comply with Labor Code §226(a) by not providing
16 itemized wage statements accurately showing, including but not limited to, total hours worked
17 during the pay period and pay due and owing for failure on multiple occasions to pay all earned
18 wages and failure on multiple occasions to provide meal and rest breaks.

19 20. At the time Plaintiff's employment and the employment of other former employees
20 of Defendants ended, Defendants willfully failed to pay overtime wages, minimum wages, and one
21 hour of wages in lieu of each unprovided or interrupted meal period and unprovided rest period as
22 described herein.

23 21. Defendants have failed to comply with Labor Code § 2802 by not reimbursing
24 employees for business related expenses, including but not limited to, requiring employees to use
25 their own personal vehicles to purchase supplies and for not maintaining or laundering their
26 required uniforms.

27 ///

28 ///

1 **CLASS ACTION ALLEGATIONS**

2 22. Plaintiff brings this action on behalf of herself, and all others similarly situated,
3 as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent
4 six Classes composed of and defined as follows:

5 **Non-Exempt Employee Class**

6 All current and former non-exempt employees of Defendants within the State of
7 California at any time commencing four (4) years preceding the filing of Plaintiff's
8 complaint up until the time that notice of the class action is provided to the class
(collectively referred to as "Non-Exempt Employee Class").

9 **Rest Period Class**

10 All current and former non-exempt employees of Defendants within the State of
11 California at any time commencing four (4) years preceding the filing of Plaintiff's
12 complaint up until the time that notice of the class action is provided to the class,
who worked shifts of 4 hours or more (collectively referred to as "Rest Period
Class").

13 **Meal Period Class**

14 All current and former non-exempt employees of Defendants within the State of
15 California at any time commencing four (4) years preceding the filing of Plaintiff's
16 complaint up until the time that notice of the class action is provided to the class,
who worked shifts of 5 hours or more (collectively referred to as "Meal Period
Class").

17 **Late Pay Class**

18 All former non-exempt employees of Defendants within the State of California at
19 any time commencing three (3) years preceding the filing of Plaintiff's complaint
up until the time that notice of the class action is provided to the class, who did not
20 receive all their wages upon termination and or resignation of their employment
(collectively referred to as "Late Pay Class").

21 **Wage Statement Class**

22 All current and former non-exempt employees of Defendants within the State
23 of California, to whom, at any time commencing one (1) year
preceding the filing of Plaintiff's complaint up until the time that
24 notice of the class action is provided to the class, were provided with
wage statements (collectively referred to as "Wage Statement Class").

25 **Reimbursement Class Members**

26 All current and former non-exempt employees of Defendants within the State of
27 California, who were not reimbursed for business related expenses, including but
not limited to purchase of required tools, at any time commencing four (4) years
28 preceding the filing of Plaintiff's complaint up until the time that notice of the class
action is provided to the class (collectively referred to as "Reimbursement Class").

1 23. Plaintiff reserves the right under California Rules of Court Rule 3.765(b), to amend
2 or modify the class description with greater specificity or further division into subclasses or
3 limitation to particular issues.

4 24. This action has been brought and may properly be maintained as a class action
5 under the provisions of California Code of Civil Procedure §382 because there is a well-defined
6 community of interest in the litigation and the proposed Class is easily ascertainable.

7 **A. Numerosity**

8 25. The potential members of the Class as defined are so numerous that joinder of all
9 the members of the Class is impracticable. While the precise number of Class Members has not
10 been determined at this time, Plaintiff is informed and believes that there at least one hundred Class
11 Members employed by Defendants within the State of California.

12 26. Accounting for employee turnover during the relevant periods necessarily increases
13 this number substantially. Plaintiff alleges Defendants' employment records would provide
14 information as to the number and location of all Class Members. Joinder of all members of the
15 proposed Class is not practicable.

16 **B. Commonality**

17 27. There are questions of law and fact common to Class Members. These common
18 questions include, but are not limited to:

- 19 (1) Did Defendants violate Labor Code §1194 by not compensating Class
20 Members overtime wages?
- 21 (2) Did Defendants violate Labor Code §§1194 and 1197 by not paying Class
22 Members minimum wages for all hours worked?
- 23 (3) Did Defendants violate Labor Code §512 by not providing Class Members
24 with meal periods?
- 25 (4) Did Defendants violate Labor Code §226.7 by not providing Class
26 Members additional wages for missed or interrupted meal periods?
- 27 (5) Did Defendants violate Labor Code §226.7 by not providing Class
28 Members additional wages for missed rest periods?

- 1 (6) Did Defendants violate Labor Code §§201 and 202 by failing to pay Class
2 Members upon termination or resignation all wages earned?
- 3 (7) Are Defendants liable to Class Members for penalty wages under Labor
4 Code §203?
- 5 (8) Did Defendants violate Labor Code §226(a) by not furnishing Class
6 Members with accurate wage statements?
- 7 (9) Did Defendants violate Labor Code §2802 (a) by not reimbursing Class
8 Members for business related expenses?
- 9 (10) Did Defendants violate the Unfair Competition Law, Business and
10 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
11 herein?
- 12 (11) Are Class Members entitled to costs and attorney's fees?
- 13 (12) Are Class Members entitled to interest?

14 **C. Typicality**

15 28. The claims of Plaintiff herein alleged are typical of those claims which could be
16 alleged by any member of the classes, and the relief sought is typical of the relief which would be
17 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
18 Classes sustained injuries and damages arising out of and caused by Defendants' common course
19 of conduct in violation of laws and regulations that have the force and effect of law and statutes as
20 alleged herein.

21 **D. Adequacy of Representation**

22 29. Plaintiff will fairly and adequately represent and protect the interests of the
23 members of the Classes. Counsel who represents Plaintiff is competent and experienced in
24 litigating wage and hour class actions.

25 **E. Superiority of Class Action**

26 30. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
28 questions of law and fact common to the Class predominate over any questions affecting only

1 individual members of the Class. Each member of the Class has been damaged and is entitled to
2 recovery by reason of Defendants' illegal policy and/or practice of failing to pay overtime wages,
3 failing to pay minimum wages, failing to provide meal and rest breaks or compensation in lieu
4 thereof, failing to provide accurate itemized wage statements, failing to reimburse for business
5 related expenses, and failing to pay all wages due upon termination and/or resignation.

6 31. Class action treatment will allow those similarly situated persons to litigate their
7 claims in the manner that is most efficient and economical for the parties and the judicial system.
8 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
9 action that would preclude its maintenance as a class action.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME WAGES**

12 **(By Plaintiff and the Class Against All Defendants)**

13 32. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 33. At all times relevant to this complaint, California Labor Code §510 was in effect
16 and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight
17 hours in one workday and any work in excess of forty hours in any one workweek . . . shall be
18 compensated at the rate of no less than one and one-half times the regular rate of pay for an
19 employee."

20 34. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
21 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
22 forty hours in a work week and on multiple occasions these employees have not been paid
23 overtime wages.

24 35. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in
25 excess of eight hours per day and/or forty hours per week and without properly compensating
26 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
27 §1194.

28 ///

36. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Employee Class have been deprived of overtime wages in an amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code §3287.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(By Plaintiff and the Class Against All Defendants)

37. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

38. At all relevant times, Plaintiff and the members of the Non-Exempt Employee Class were employees of Defendants covered by Labor Code §1197 and applicable Wage Orders.

13 39. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the
14 members of the Non-Exempt Employee Class were entitled to receive minimum wages for all
15 hours worked.

40. At all times herein mentioned, to the extent that Plaintiff and Non-Exempt Employee Class worked for Defendants during shifts that were less than eight hours in a work day and/or less than forty hours in a work week, on multiple occasions these employees have not been paid minimum wage. Defendants failure to pay Plaintiff and members of the Non-Exempt Employee Class minimum wages for all hours worked, as described herein, is in violation of Labor Code §1197 and applicable Wage Orders. As a result of Defendants' pattern and practice, Plaintiff and members of the Non-Exempt Employee Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked.

41. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of the Non-Exempt Employee Class are entitled to recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, reasonable attorneys' fees, and costs of suit.

27 |||

28 *///*

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(By Plaintiff and the Class Against All Defendants)**

4 42. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 43. California law and applicable Wage Orders require that employers “authorize and
7 permit” employees to take paid 10 minute rest periods in about the middle of each 4-hour work
8 period “or major fraction thereof.” Accordingly, employees who work shifts of 3 ½ to 6 hours
9 must be provided 10 minutes of paid rest period, employees who work shifts of more than 6 and up
10 to 10 hours must be provided with 20 minutes of paid rest period, and employees who work shifts
11 of more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and other
12 members of the Rest Period Class were not provided with requisite rest periods as contemplated
13 under the law.

14 44. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a
15 meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
16 Commission, the employer shall pay the employee one additional hour of pay at the employee’s
17 regular rate of compensation for each work day that the meal period or rest period is not provided.

18 45. By their failure to provide Plaintiff and other members of the Rest Period Class
19 with the rest periods contemplated by California law, and failing to provide compensation for such
20 unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor
21 Code §226.7 and applicable Wage Orders.

22 46. As a result of Defendants’ unlawful conduct Plaintiff and the other members of the
23 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were not
24 paid additional pay owed for missed rest periods.

25 47. Plaintiff and the other members of the Rest Period Class are entitled to recover the
26 full amount of their unpaid additional pay for missed rest periods. Pursuant to Code of Civil
27 Procedure §1021.5, Plaintiff and the other members of the Rest Period Class are entitled to recover
28 reasonable attorneys’ fees and costs of suit.

48. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Rest Period Class are entitled to recover prejudgment interest on the additional pay owed for missed rest periods.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(By Plaintiff and the Class Against All Defendants)

49. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

50. Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and other members of the Meal Period Class were not provided with requisite meal periods as contemplated under the law.

51. Pursuant to Labor Code §226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period or rest period is not provided.

52. By their failure to provide Plaintiff and members of the Meal Period Class with the meal periods contemplated by California law, and failing to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully violated the provisions of Labor Code §512 and applicable Wage Orders.

53. As a result of Defendants' unlawful conduct Plaintiff and the other members of the Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed meal periods.

54. Plaintiff and the other members of the Meal Period Class are entitled to recover the full amount of their unpaid additional pay for missed meal periods. Pursuant to Code of Civil

1 Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to recover
2 reasonable attorney's fees and costs of suit.

3 55. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Meal Period
4 Class are entitled to recover prejudgment interest on the additional pay owed for missed meal
5 periods.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

8 **(By Plaintiff and the Class Against All Defendants)**

9 56. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs of this Complaint as though fully set forth herein.

11 57. At all relevant times, Plaintiff and other members of the Late Pay Class were
12 employees of Defendants covered by Labor Code §§ 201 and 202.

13 58. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay
14 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
15 termination. Discharged employers were entitled to payment of all wages earned and unpaid prior
16 to discharge immediately upon termination. Employees who resigned were entitled to payment of
17 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
18 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
19 unpaid at the time of resignation.

20 59. Defendants failed to pay Plaintiff and other members of the Late Pay Class all
21 wages earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202.
22 Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that
23 at all relevant times within the applicable limitations period, Defendants had a practice of not
24 paying upon termination, the wages owed to them as a consequence of overtime wages, minimum
25 wages, and meal and rest period violations.

26 60. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
27 earned prior to termination in accordance with Labor Code §§ 201 and 202 was wilful. Defendants
28 had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the

time of termination in accordance with Labor Code §§ 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

61. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late Pay Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

62. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class are entitled to penalty wages from the date they earned and unpaid wages were due, upon termination, until paid, up to a maximum of 30 days.

63. As a result of Defendants' unlawful conduct Plaintiff and other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination.

64. As a result of Defendants' unlawful conduct Plaintiff and the other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid all penalty wages owed under Labor Code § 203.

65. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other members of the Late Pay Class are entitled to recover the full amount of their unpaid wages, and penalty wages under Labor Code § 203, reasonable attorneys' fees, and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the other members of the Late Pay Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff and the Class Against All Defendants)

66. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

67. At all relevant times, Plaintiff and the other members of the Wage Statement Class were employees of Defendants covered by Labor Code § 226.

68. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement showing gross wages earned, net wages earned, all applicable hourly

1 rates in effect during the pay period and the corresponding number of hours worked at each hourly
2 rate by the employee.

3 69. Defendants failed to provide Plaintiff and the other members of the Wage
4 Statement Class accurate itemized wage statements in accordance with Labor Code § 226(a).

5 70. Plaintiff and the other members of the Wage Statement Class are informed and
6 believe and thereon allege that at all relevant times, Defendants maintained and continue to
7 maintain a policy and practice of issuing wage statements that do not show, including but not
8 limited to, all hour worked, all applicable pay rates, pay due and owing for meal and rest break law
9 violations. Defendants' practices resulted and continue to result in, the issuance of Wage
10 Statements to Plaintiff and other members of the Class that do not comply with the itemization
11 requirements.

12 71. Defendants' failure to provide Plaintiff and other members of the Wage Statement
13 Class with accurate Wage Statements was knowing and intentional. Defendants had the ability to
14 provide Plaintiff and the other members of the Wage Statement Class with accurate Wage
15 Statements, but intentionally provided wage statements that Defendants knew were not accurate.

16 72. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
17 Wage Statement Class have suffered injury. The absence of accurate information on their wage
18 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
19 and mathematical computations to determine the amount of wages owed, causes difficulty and
20 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
21 information about wages and amounts deducted from wages to state and federal government
22 agencies.

23 73. Pursuant to Labor Code § 226(e) Plaintiff and other members of the Wage
24 Statement Class are entitled to recover \$50 for the initial pay period during the period in which
25 violation of Labor Code § 226 occurred and \$100 for each violation of Labor Code § 226 in a
26 subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee.

27 74. Pursuant to Labor Code §§ 226(e) and 226(g), Plaintiff and the other members of
28 the Wage Statement Class are entitled to recover the full amount of penalties due under Labor

1 Code § 226(e) reasonable attorneys’ fees and costs of suit.

2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE §2802**

4 **(By Plaintiff and Class Members Against All Defendants)**

5 75. Plaintiff realleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs of this Complaint as though fully set forth herein.

7 76. California Labor Code §2802(a) provides that “an employer shall indemnify his
8 or her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
10 employer . . .”.

11 77. California Code of Regulations, Title 8, §11070 (9)(A) provides that
12 “when uniforms are required by the employer to be worn by the employee as a condition of
13 employment, such uniforms shall be provided and maintained by the employer.”

14 78. At all relevant times, Defendants required Plaintiff and the Reimbursement Class
15 Members to wear uniforms provided by Defendants and were not reimbursed for being required to
16 maintain the uniform.

17 79. Due to the nature of the work performed by Plaintiff and the Reimbursement Class
18 Members, the uniforms became, in the course and scope of their work, heavily soiled, and needed
19 special care. At all relevant times, Defendants required all its employees to maintain the required
20 uniforms, however, failed to provide an allowance for the maintenance of the required uniforms.

21 80. At all relevant times, Defendants required Plaintiff and the Reimbursement Class
22 Members to use their personal vehicles to purchase supplies for the restaurant and were not
23 reimbursed for mileage.

24 81. Pursuant to Labor Code §2802, Defendants’ owe to Plaintiff and each
25 Reimbursement Class Member for reimbursement of business related expenses which were
26 required to perform their work duties, plus interest thereon and reasonable attorney’s fees.

27 ///

28 ///

1 **EIGHT CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(By Plaintiff and the Class Against All Defendants)**

4 82. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 83. The unlawful conduct of Defendants alleged herein constitutes unfair competition
7 within the meaning of Business & Professions Code § 17200. Due to their unlawful business
8 practices in violation of the Labor Code, Defendants have gained a competitive advantage over
9 other comparable companies doing business in the state of California that comply with their
10 obligations to compensate employees in accordance with the Labor Code.

11 84. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
12 similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff
13 and similarly situated Class Members have been deprived from not being compensated overtime
14 wages, from not being compensated minimum wages, from not being provided with meal and rest
15 breaks or compensation in lieu thereof, from not being paid all wages due upon termination or
16 resignation, from being provided with inaccurate wage statements, and from not being reimbursed
17 for business related expenses.

18 85. Pursuant to Business & Professions Code § 17203 Plaintiff and similarly situated
19 Class Members are entitled to restitution of all wages and other monies owed to them under the
20 Labor Code, including interest thereon, in which they had a property interest which Defendants
21 failed to pay them but withheld and retained for themselves. Restitution of the money owed to
22 Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming
23 unjustly enriched by their failure to comply with the Labor Code.

24 86. Plaintiff and similarly situated Class Members are entitled to recover reasonable
25 attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil
26 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

27 ///

28 ///

1 NINTH CAUSE OF ACTION

2 CIVIL PENALTIES LABOR CODE §2699

3 (By Plaintiff and the Class Against All Defendants)

4 87. Plaintiff realleges and incorporate by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 88. During the period beginning one year period preceding the filing of the Complaint
7 in this action (the “Civil Penalty Period”), Defendants violated, including but not limited, to Labor
8 Code §§ 200, 201, 202, 203, 210, 226, 226.3, 226.7, 256, 510, 512, 1194, 1194.2, 1197, 1197.1,
9 1199, 2802

10 89. Labor Code §2699(a) and (g) authorize an aggrieved employee, on behalf of
11 themselves and other current and former employees, to bring a civil action to recover civil
12 penalties pursuant to the procedures specified in Labor Code §2699.3.

13 90. Plaintiff has complied with the procedures for bringing suit specified in Labor
14 Code §2699.3. On or about May 20, 2022, Plaintiff gave written notice to the Labor and
15 Workforce Development Agency (“LWDA”) and to Defendants of the specified provisions of the
16 Labor Code alleged to have been violated and Plaintiff anticipates that the LWDA will elect not to
17 investigate.

18 91. Pursuant to Labor Code §2699(a) and (f), Plaintiff and the aggrieved employees are
19 entitled to recover civil penalties for Defendants’ violations of the specified Labor Code sections
20 during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each employee per
21 pay period for the initial violation and two hundred dollars (\$200) for each employee per pay
22 period for each subsequent violation.

23 92. In addition to the civil penalties recoverable under Labor Code §2699(a) and
24 (f), to the extent permitted by law, Defendants’ failure to provide Plaintiff and aggrieved
25 employees with accurate itemized wage statements, as described herein, entitles Plaintiff to seek
26 separate civil penalties for Defendants’ violation of Labor Code §226 (a) and 226 (e). For
27 violations of Labor Code §226 (a), Plaintiff seeks civil penalties provided by Labor Code §226.3.
28 Pursuant to Labor Code § 226.3, “[a]ny employer who violates subdivision (a) of section 226 shall

1 be subject to a civil penalty in the amount of two hundred dollars (\$250) per employee per
2 violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation
3 in a subsequent citation, for which the employer fails to provide the employee a wage deduction
4 statement or fails to keep the required in subdivision (a) of section 226.” Accordingly, Plaintiff
5 and aggrieved employees are entitled to recover civil penalties for violations of Labor Code §
6 226.3 and seeks default civil penalties for each of Defendants’ numerous violations of Labor Code
7 §226 (e).

8 93. Moreover, pursuant to Labor Code §1197.1, subdivision (a): “Any employer or
9 other person acting either individually or as an officer, agent, or employee of another person, who
10 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable
11 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of
12 wages, liquidated damages payable to the employee, and any applicable penalties imposed
13 pursuant to Section 203 as follows:

- 14 a. For any initial violation that is intentionally committed, one hundred dollars (\$100)
15 for each unpaid employee for each pay period of which the employee is underpaid.
16 This amount shall be in addition to an amount sufficient to recover underpaid
17 wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
18 imposed pursuant to Section 203.
- 19 b. For each subsequent violation for the same specific offence, two hundred fifty
20 dollars (\$250) for each underpaid employee for each pay period for which the
21 employee is underpaid regardless of whether the initial violation is intentionally
22 committed. This amount shall be in addition to an amount sufficient to recover
23 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
24 applicable penalties imposed pursuant to Section 203.
- 25 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
26 Section 203, recovered pursuant to this section shall be paid to the affected
27 employee.”

28 ///

1 ///

2 94. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
3 caused Plaintiff and aggrieved employees not to be paid minimum wages as a result of Defendants,
4 without limitation, routinely failing to pay Plaintiff and other aggrieved employees' wages for all
5 hours worked or otherwise under Defendants' control due to, without limitation, routinely failing
6 to accurately track and/or pay for all hours actually worked; and engaging, suffering, or permitting
7 employees to work off the clock. As a direct and proximate result of Defendants' conduct,
8 Plaintiff and other aggrieved employees are entitled to recover directly from Defendants civil
9 penalties pursuant to Labor Code §1197.1.

10 95. In addition to the civil penalties recoverable under Labor Code §2699(a) and
11 (f), to the extent permitted by law, Defendants' failure to pay Plaintiff and other aggrieved
12 employees timely wages for all hours worked, entitles Plaintiff to seek separate civil penalties for
13 Defendants' violation of Labor Code § 204 and 210. Specifically, Defendants failed to pay all
14 wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code
15 §204(d). Labor Code §210 (a) provides that "in addition to, and entirely independent and apart
16 from, any other penalty provided in this article, every person who fails to pay the wages of each
17 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) for any
18 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
19 subsequent violation, or any wilful or intentional violation, two hundred dollars (\$200) for each
20 failure to pay each employee, plus 25 percent of the amount unlawfully withheld." Accordingly,
21 Plaintiff and aggrieved employees are entitled to recover civil penalties for violations of Labor
22 Code §§ 204 and 210.

23 96. Lastly, pursuant to Labor Code § 558 any employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare Commission
26 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
27 each underpaid employee for each pay period for which the employee was underpaid in addition to
28 an amount sufficient to recover underpaid wages; and (2) For each subsequent violation, one

hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. As indicated herein, Plaintiff and aggrieved employees were underpaid wages as a result of the asserted Labor Code violations and therefore are entitled to recover civil penalties under Labor Code §558.

97. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are entitled to an award of reasonable attorneys' fees and costs in connection with their claims for civil penalties.

PRAYER

WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

A. An order certifying that Plaintiff may pursue her claims against Defendants as a class action on behalf of the Class Members;

B. An order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;

C. Penalties for inaccurate wage statements under Labor Code §226(e);

D. Damages for unpaid wages under Labor Code §§201 or 202;

E. Damages for unpaid penalty wages under Labor Code §203;

F. Damages for unpaid wages for missed meal periods under Labor Code §226.7;

G. Damages for unpaid wages for missed rest periods under Labor Code §226.7;

H. Damages for minimum wages;

I. Damages for premium wages;

J. Liquidated damages for unpaid minimum wages;

K. Damages for unpaid overtime wages under Labor Code §1194;

L. Restitution under Business and Professions Code §17203;

M. Pre-judgment interest;

N. Costs;

O. Reimbursement for business related expenses;

P. Reasonable attorney's fees;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Q. Civile Penalties under Labor Code §§ 210, 226.3, 558, 1197.1, 2699(a)-(f); and
- R. Such other and further relief as the Court deems just and proper.

DATED: November 1, 2022

THE NOURMAND LAW FIRM, APC

By: /s/ James A. De Sario
Michael Nourmand, Esq.
James A. De Sario, Esq.
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is 8822 West Olympic Boulevard, Beverly Hills, California 90211.

On November 1, 2022, I served the following document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

Michael J. O'Connor Jr., Esq.
Sarkis A. Atoyan, Esq.
Atkinson, Andelson, Loya Ruud & Romo
201 South Lake Avenue, Suite 300
Pasadena, California 91101

Courtesy Copy by Email: Michael.OConnor@aalrr.com; Sarkis.Atoyan@aalrr.com; Janine.Holman@aalrr.com; Kaila.Simoneit@aalrr.com

BY MAIL: As follows: I am readily familiar with our office's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address stated above, following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on November 1, 2022, at Beverly Hills, California.

Alejandra Beltran
Alejandra Beltran