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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento

03/25/2025

By: A. Gray Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

FARAH RAMOS, on behalf of herself and all
others similarly situated;

Plaintiffs,

vs.

NEW PUNCH BOWL SACRAMENTO, LLC, a
Delaware limited liability company; and DOES
1 through 100, inclusive;

Defendants.

Case No. 25CV000847

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);**
- 2. FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- 3. MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- 4. REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- 5. WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- 6. WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- 7. FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- 8. UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- 9. PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Farah Ramos (“Plaintiff”), on behalf of herself and all others similarly situated,
2 and as a private attorney general on behalf of the State of California and other aggrieved
3 employees, hereby brings this Class and Representative Action Complaint against New Punch
4 Bowl Sacramento, LLC and Does 1 through 100, inclusive (collectively, “Defendants”), and on
5 information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, and as a private
8 attorney general on behalf of the State of California and other aggrieved employees, brings this
9 class and representative action for recovery of unpaid wages and penalties under California
10 Business and Professions Code section 17200, *et. seq.*; Labor Code §§ 201-204, 226, 226.7, 245
11 *et seq.*, 351, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, and 2698 *et seq.*;
12 and Industrial Welfare Commission Wage Order No. 5 (“Wage Order 5”), in addition to seeking
13 declaratory relief and restitution. This class action is brought pursuant to Code of Civil Procedure
14 § 382. This Court has jurisdiction over Defendants’ Labor Code violations as the amount in
15 controversy exceeds this Court’s jurisdictional minimum.

16 **VENUE**

17 2. Venue is proper in this judicial district pursuant to California Code of Civil
18 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
19 occurred in Sacramento County. Defendants own, maintain offices, transact business, have an
20 agent or agents within Sacramento County, and/or otherwise are found within Sacramento
21 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

22 **PARTIES**

23 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
25 the filing of this action and within the statute of limitations periods applicable to each cause of
26 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
27 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
28 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-

204, 226, 226.7, 245 *et seq.*, 351, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 5 which sets employment standards for the public housekeeping industry, which includes restaurants, nightclubs, taverns, bars, and cocktail lounges.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a venue offering food, cocktails, and a variety of entertainment options such as bowling, darts, and karaoke, and that they employed Plaintiff and other similarly situated non-exempt employees within Sacramento County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 26) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
2 Members (as defined in Paragraph 26).

3 **GENERAL FACTUAL ALLEGATIONS**

4 9. Plaintiff was employed by Defendants as a non-exempt server from in or about
5 2017 through 2019 and from on or about June 4, 2021 through in or about June 2024.

6 10. Defendants operate venues offering food, cocktails, and entertainment options
7 such as bowling, darts, ping pong, and karaoke to their customers. Defendants own and operate
8 several of these venues throughout the United States, including multiple locations in California.
9 Plaintiff worked for Defendants at their Sacramento location.

10 11. During the relevant time period, Defendants utilized a timekeeping and tip payout
11 system which resulted in Plaintiff and other non-exempt employees not being compensated for
12 all hours actually worked and all tips actually earned. Defendants divided their non-exempt
13 employees into “Zones” during their shifts. Defendants promised to pay out tips for each shift
14 depending upon the amount of tips earned and hours worked in each Zone, with the total dollar
15 amount of tips divided by the total number of hours worked in each zone to arrive at an hourly tip
16 rate for that Zone on that shift. For example, if “Zone 1” earned \$1,000 in tips on a given shift
17 and the workers in Zone 1 collectively worked 100 hours on that shift, then each hour worked in
18 Zone 1 on that shift was worth \$10 in tips. So, for example, if an employee worked 8 hours in
19 that shift in Zone 1, that employee would receive \$80 in tips for that shift. Under this system, if
20 one Zone earned much more in tips than another Zone, then the non-exempt employees in the
21 higher tipping Zone were supposed to earn more in tips. However, Defendants regularly failed to
22 pay its non-exempt employees according to this promised pay scheme.

23 12. Instead, Defendants often manipulated the time records of its non-exempt
24 employees, and thus the amount of tips employees earned, based upon Defendants’ arbitrary and
25 ever-changing feelings about what was “fair.” For example, often one or more Zones earned high
26 tips for a shift, resulting in higher tips for employees who worked in those Zones than for
27 employees who worked in other Zones. Deciding that was “unfair,” Defendants would add hours
28 to the time records of non-exempt employees who did *not* work in the highly tipped Zones as if

1 they *did* work in those Zones for those hours. This would cause the divisor (number of total hours
2 worked) in the tip formula to increase, thereby reducing the amount of tips paid to employees
3 who actually worked in the highly tipped Zones. By virtue of this practice, Defendants failed to
4 pay its employees all owed tip wages by manipulating the hours worked by their employees in
5 various Zones.

6 13. Further, Defendants failed to properly pay out all tips paid by their customers.
7 Defendants utilized a software for “buy-outs” of their venues called Tripleseat. Defendants’
8 customers would pay for their “buy-out” reservations through Tripleseat. Defendants’ customers
9 also had the option of tipping for their event after it was over through Tripleseat. When these
10 customers tipped through Tripleseat after the event, Defendants kept all of these tips instead of
11 paying them to their non-exempt employees who served the customers during the “buy-out” event.

12 14. Defendants also failed to properly pay out tips when some managerial employees
13 were unlawfully provided with tips from their shifts. On some occasions, employees with the job
14 title of Shift Lead would be asked to clock-in as Managers and perform only managerial duties
15 without servicing any Zones or customers during their shift. Defendants would then sometimes
16 pay these Shift Leads who performed as Managers a portion of the tips earned by other employees
17 during their managerial shift. As a result, the service employees who worked those shifts and
18 actually serviced customers failed to receive the full amount of tips earned and owed to them.

19 15. During the relevant time period, Defendants also failed to provide full, off-duty,
20 and timely meal periods to Plaintiff and other non-exempt employees. Specifically, Plaintiff and
21 other employees were typically too busy to take a lunch period, despite working between six and
22 twelve hours per shift. Plaintiff would often ask her managers if she could take a lunch period,
23 but was told she could not because of how busy the venue was. As a result, Plaintiff and other
24 non-exempt employees were regularly not provided with timely, off-duty meal periods.

25 16. When Plaintiff and other non-exempt employees were too busy to take a meal
26 period and so did not clock out for a meal period, Defendants would frequently add a 30-minute
27 unpaid meal period to their time records after-the-fact using a “manager swipe.” These practices
28 would result in Plaintiff and other non-exempt employees not being paid for those 30 minutes that

1 they were actually working, by unlawfully deducting this time from their wages. This resulted in
2 unpaid wages, including unpaid minimum wages and overtime wages.

3 17. Despite failing to provide Plaintiff and other non-exempt employees with legally
4 compliant meal periods, Defendants have failed to pay all of the meal period premiums required
5 by Labor Code § 226.7. (Defendants occasionally paid *some* meal period premiums.) On
6 information and belief, Defendants have failed to provide lawful meal periods to, and have taken
7 unlawful wage deductions from, their non-exempt employees at their various California locations
8 as described above.

9 18. Defendants have also failed to authorize and permit compliant rest periods to
10 Plaintiff and other non-exempt employees. As with meal periods, Defendants often refused to
11 allow Plaintiff and other non-exempt employees to take rest periods because the venue was too
12 busy. Despite failing to authorize and permit legally compliant rest periods to Plaintiff and other
13 non-exempt employees, Defendants have failed to pay the rest period premiums required by Labor
14 Code § 226.7. On information and belief, Defendants have likewise failed to authorize and permit
15 rest periods to their non-exempt employees at their various California locations.

16 19. Defendants have also failed to pay sick time at the proper rate of pay as required
17 under California law. Specifically, when Plaintiff worked multiple rates of pay in a workweek
18 and also received sick pay in the same workweek, Defendants paid Plaintiff her sick pay at her
19 lower rate of pay, rather than the weighted average of her multiple rates of pay. For example, in
20 the workweek of February 19-25, 2024, Plaintiff's wage statement reflects that she was paid for
21 6.75 hours at \$16.00 per hour and 6.57 hours at \$20.00 per hour. Plaintiff's wage statement further
22 reflects that she was paid at \$16.00 per hour (i.e., her lower hourly rate) for 8.0 hours of sick pay
23 in that workweek. This happened in other pay periods, as well, such as March 25-31, 2024
24 (Plaintiff was paid for 3.5 hours of sick pay at \$16.00 per hour despite working 7.2 hours at \$20.00
25 per hour in the same workweek) and June 3-9, 2024 (Plaintiff was paid for 5.53 hours of sick pay
26 at \$16.00 per hour despite working 7.02 hours at \$10.00 per hour in the same workweek).

27 20. This practice violates California law, which requires sick pay to be calculated in
28 the same manner as an employee's "regular rate" of pay is calculated for purposes of overtime

1 calculation. See Labor Code § 246(l)(1) (sick pay should be “calculated in the same manner as
2 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or
3 not the employee actually works overtime in that workweek”). Where an employee works
4 multiple rates of pay in a workweek and also works overtime hours, the employee must be paid
5 overtime at 1.5 times the weighted average of those rates. See DLSE Enforcement Manual at §
6 49.2.5: “**Weighted Average Method.** When two rates of pay are paid during a workweek, the
7 California method for determining the regular rate of pay for calculating overtime in the
8 workweek mirrors the federal method, based upon the weighted average of all hourly rates
9 paid....*The rate will be established by adding all hours worked in the week and dividing that*
10 *number into the total compensation for the week*” (italics added); see also *Alvarado v. Dart*
11 *Container Corp. of Calif.*, 4 Cal.5th 542, 544 (2018) (“Not all employees earn at a fixed pay rate
12 throughout a pay period, and therefore regular rate of pay is a *weighted average* reflecting work
13 done at varying times, under varying circumstances, and at varying rates.”) (emphasis in original)
14 (citing to DLSE Enforcement Manual § 49.2.5). Thus, in workweeks where Plaintiff worked at
15 multiple hourly rates, she should have been paid her sick pay at a rate that was the *weighted*
16 *average* of those hourly rates. As described above, Defendants failed to do so, and instead have
17 paid Plaintiff’s and other employees’ sick pay wages at their *lower* rates of pay, which is less than
18 their “regular rate” of pay.

19 21. Defendants have also required Plaintiff and other employees to incur business
20 expenses without reimbursement. For example, Plaintiff and other employees were required to
21 use their personal cell phones for work purposes, including but not limited to downloading and
22 using applications such as Hot Schedules to access their work schedules. Hot Schedules was the
23 only way that Plaintiff and other employees could access their work schedules and know when to
24 come in for their next shift, and which was only able to be viewed from the employees’ personal
25 cell phones.

26 22. Despite requiring Plaintiff and other employees to use their personal property for
27 work-related purposes, Defendants have failed to reimburse them for any portion of their personal
28 expenses, including any portion of their monthly cell phone bill. As a result of the foregoing,

Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding employer must reimburse employees for “reasonable percentage” of their cell phone bills if they are required to use their cell phones for work, even if employees did not incur specific out-of-pocket expense).

23. As a result of Defendants’ failure to pay all wages due, their failure to account for and compensate for all hours worked by its employees, and/or their failure to pay meal and rest period premium wages, Defendants have failed to pay all wages to Plaintiff and other formerly employed non-exempt employees at the separation of their employment.

24. As a further result of Defendants’ unlawful practices described above, Defendants have maintained inaccurate time and payroll records, and have issued inaccurate wage statements to Plaintiff and other non-exempt employees.

25. On information and belief, Defendants have engaged in the above unlawful practices throughout the putative class period and continuing to the present.

CLASS ACTION ALLEGATIONS

26. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to California Code of Civil Procedure § 382:

a. The Tip Pool Class consists of all of the Defendants’ current and former non-exempt employees in California who were subject to Defendants’ tipping practices, at any time from four years prior to the filing of this action to the present.

b. The Minimum Wage Class consists of all of the Defendants’ current and former non-exempt employees in California who were subject to Defendants’ timekeeping and payroll practices, at any time from four years prior to the filing of this action to the present.

c. The Overtime Class consists of all of the Defendants’ current and former non-exempt employees in California who worked more than 8.0 hours in a workday and/or over 40.0 hours in a workweek and were subject to Defendants’ timekeeping and payroll practices, at any time from four years prior to the filing of this action through the present.

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1 d. The Meal Period Class consists of all of the Defendants' current and former non-
2 exempt employees in California who worked at least one shift in excess of 5.0 hours at any
3 time from four years prior to the filing of this action through the present.

4 e. The Rest Period Class consists of all of the Defendants' current and former non-
5 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
6 time from four years prior to the filing of this action through the present.

7 f. The Wage Statement Class consists of all members of the Minimum Wage Class,
8 Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage
9 statement from Defendants at any time from one year prior to the filing of this action
10 through the present.

11 g. The Waiting Time Class consists of all members of the Minimum Wage Class,
12 Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed
13 by Defendants and whose employment with Defendants ended at any time from three years
14 prior to the filing of this action through the present.

15 h. The Expense Reimbursement Class consists of all of Defendants' employees who
16 were required to use their personal property for work-related purposes, including but not
17 limited to personal cellular phones, at any time from four years prior to the filing of this
18 action through the present.

19 27. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
20 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
21 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
22 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
23 Defendants' employment records.

24 28. **Common Questions of Law and Fact Predominate/Well Defined Community**
25 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
26 situated employees, which predominate over questions affecting only individual members
27 including, without limitation to:
28

- i. Whether Defendants paid members of the Minimum Wage Class at least the applicable minimum wage for all hours worked;
- ii. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, §§ 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- iv. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- vi. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment; and
- vii. Whether Defendants properly reimbursed expenses incurred by members of the Expense Reimbursement Class.

29. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' timekeeping, overtime, wage statement, meal period, rest period, expense reimbursement, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

30. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the members of the Classes, was not paid all earned wages, including

but not limited to minimum wages and overtime wages; was subject to Defendants' uniform meal and rest period policies/practices; was furnished with inaccurate wage statements; was deprived of all final wages upon her separation of employment from Defendants; and was not reimbursed for all expenses she incurred in carrying out her job duties for Defendants.

31. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

32. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Classes to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by individual class members would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Classes are not

1 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
2 costs and expenses attending thereto. As such, the Classes identified in Paragraph 26 are
3 maintainable under California Code of Civil Procedure § 382.

4 **FIRST CAUSE OF ACTION**

5 **MINIMUM WAGE VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 34. Wage Order 5 and Labor Code §§ 1197 and 1182.12 establish employees' right to
9 be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a)
10 and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as
11 required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
12 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

13 35. At all relevant times, Defendants failed to conform their pay practices to the
14 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
15 actually worked including, but not limited to, all hours they were subject to Defendants' control
16 and/or suffered or permitted to work under the Labor Code and Wage Order 5.

17 36. California Labor Code § 1198 makes unlawful the employment of an employee
18 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
19 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
20 those employees the balance of the unpaid wages as well as liquidated damages in an amount
21 equal to the wages due and interest thereon.

22 37. As a direct and proximate result of Defendants' unlawful conduct as alleged
23 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
24 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
25 entitled to recover economic and statutory damages and penalties and other appropriate relief as
26 a result of Defendants' violations of the California Labor Code and applicable Wage Orders.

27 38. Defendants' practice and uniform administration of corporate policy regarding
28 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff

1 and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
2 liquidated damages, interest, statutory penalties, and attorneys' fees and costs of suit, per Labor
3 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY OVERTIME WAGES**
6 **(AGAINST ALL DEFENDANTS)**

7 39. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

8 40. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
9 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
10 overtime hours worked, and which provide a private right of action for the failure to pay all
11 overtime compensation for overtime work performed.

12 41. At all times relevant herein, Defendants were required to properly compensate
13 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
14 Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an
15 employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of
16 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on
17 the seventh consecutive workday in a workweek. Wage Order 5, § 3 also requires an employer to
18 pay an employee double the employee's regular rate of pay for work in excess of 12 hours in a
19 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.
20 As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime
21 and double-time hours but did not compensate them at one and one-half times (or two times) their
22 regular rate of pay for such hours.

23 42. The foregoing unlawful policies and practices create entitlement to recovery by
24 Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime premiums,
25 including interest thereon, statutory penalties, and attorneys' fees and costs pursuant to California
26 Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 5, for the reasons set forth in this Complaint.

45. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 5, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

46. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

47. Labor Code §§ 226.7 and 516, and Wage Order 5 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

48. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants have also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each workday they were not authorized and permitted all rest periods to which they were entitled.

49. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

1 **FIFTH CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
7 and the Wage Statement Class with accurate and complete itemized wage statements that
8 included, among other requirements, all hours worked, all hours worked at each rate of pay, and
9 all wages earned, in violation of Labor Code § 226.

10 52. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
11 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
12 among other things, the non-payment of all their wages and meal and rest period premium wages,
13 and deprived them of the information necessary to identify and reconcile the discrepancies in
14 Defendants' reported data.

15 53. Defendants' failures create an entitlement to recovery by Plaintiff and members of
16 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
17 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
18 of suit, pursuant to Labor Code §§ 226 and 226.3.

19 **SIXTH CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **(AGAINST ALL DEFENDANTS)**

22 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 55. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
24 an employer to pay all wages immediately at the time of separation of employment in the event
25 the employer discharges the employee, or the employee provides at least 72 hours of notice of
26 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
27 to quit, said employee's wages become due and payable not later than 72 hours upon said
28 employee's last date of employment.

1 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their separation from employment, including (but not limited to) unpaid minimum wages and
4 overtime wages and unpaid meal period and rest period premium wages.

5 57. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
6 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
7 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
8 to the requirements of Labor Code §§ 201-203.

9 58. Defendants' failure to pay all final wages was willful within the meaning of Labor
10 Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
11 Time Class their earned wages upon separation from employment results in a continued payment
12 of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the
13 Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable
14 attorneys' fees and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

17 **(AGAINST ALL DEFENDANTS)**

18 59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 60. At all relevant times, Defendants were subject to Labor Code § 2802, which states
20 that "an employer shall indemnify his or her employees for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
22 her obedience to the directions of the employer."

23 61. At all relevant times, Defendants were subject to Labor Code § 2804: "any contract
24 or agreement, express or implied, made by any employee to waive the benefits of this article or
25 any part thereof, is null and void, and this article shall not deprive any employee or their personal
26 representative of any right or remedy to which she is entitled under the laws of this State."

27 62. Due to Defendants' unlawful policy and practice of requiring employees to use
28 their personal property, including but not limited to personal cell phones, for work purposes and

1 their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants
2 have violated Labor Code § 2802.

3 63. As a proximate result of Defendants' policies and/or practices in violation of Labor
4 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have
5 suffered damages in sums, which will be shown according to proof.

6 64. Plaintiff and members of the Expense Reimbursement Class are entitled to
7 attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

8 65. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
9 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
10 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
11 accrue from the date on which they incurred the initial necessary expenditure.

12 **EIGHTH CAUSE OF ACTION**

13 **UNFAIR COMPETITION**

14 **(AGAINST ALL DEFENDANTS)**

15 66. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 67. Defendants have engaged, and continue to engage, in unfair and/or unlawful
17 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
18 all tips due to Plaintiff and members of the Tip Pool Class, failing to pay Plaintiff and the Classes
19 all minimum wages and overtime wages due, failing to provide meal periods or pay meal period
20 premium wages, failure to authorize and permit rest periods or pay rest period premium wages,
21 failing to furnish accurate and complete itemized wage statements, failing to reimburse business
22 expenses, and failing to pay all earned wages at separation of employment.

23 68. Defendants' utilization of these unfair and/or unlawful business practices has
24 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
25 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
26 Defendants' competitors who have been and/or are currently employing workers and attempting
27 to do so in honest compliance with applicable wage and hour laws.

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1 69. Because Plaintiff is a victim of Defendants’ unfair and/or unlawful conduct alleged
2 herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of
3 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
4 converted by Defendants pursuant to California Business & Professions Code §§ 17203 and
5 17208.

6 70. The acts complained of herein occurred within the four years immediately
7 preceding the filing of this action.

8 71. Plaintiff was compelled to retain the services of counsel to file this court action to
9 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
10 of Defendants’ current non-exempt employees, and to enforce important rights affecting the
11 public interest. Plaintiff has thereby incurred the financial burden of attorneys’ fees and costs,
12 which she is entitled to recover under Code of Civil Procedure § 1021.5.

13 **NINTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

16 72. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 73. Defendants have committed several Labor Code violations against Plaintiff and
18 other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor
19 Code § 2698 *et seq.* Plaintiff, acting on behalf of herself, the State of California, and other
20 aggrieved employees, brings this representative action against Defendants to recover the civil
21 penalties due to Plaintiff, other aggrieved employees, and the State of California according to
22 proof, as well as for injunctive relief, as provided under the Private Attorneys General Act, based
23 on the following violations:

- 24 a. Failing to pay Plaintiff and other aggrieved employees at least the applicable
25 minimum wage for all hours worked, in violation of Labor Code §§ 204,
26 1182.12, 1194, 1194.2, 1197, and 1198;

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28 ///

- b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all required rest periods to Plaintiff and other aggrieved employees, and failing to pay rest period premiums at aggrieved employees' regular rate of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198;
- f. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- g. Failing to maintain accurate records of the hours worked and/or meal periods taken by Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174, 1198, and 1199;
- h. Taking gratuities given to or left for Plaintiff and aggrieved employees by a patron, and/or failing to provide timely and full payment of gratuities owed to Plaintiff and other aggrieved employees, in violation of Labor Code § 351 *et seq.*;
- i. Failing to pay sick pay at the proper rate of pay, in violation of Labor Code § 245 *et seq.*, including but not limited to Labor Code § 246.

74. On or about January 10, 2025, Plaintiff notified Defendant New Punch Bowl Sacramento LLC via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in paragraph 73 (a)-(i) above. (Plaintiff

1 subsequently submitted an amended PAGA notice on March 5, 2025 that added text regarding
2 the sick pay violations but did not modify her substantive allegations.) Now that sixty-five days
3 have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff
4 has exhausted her administrative requirements for bringing a claim under the Private Attorneys
5 General Act with respect to these violations.

6 75. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect her interests and the interests of other aggrieved employees, and to assess and collect the
8 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
9 she is entitled to recover under Labor Code § 2699(k).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
12 this suit is brought against Defendants, as follows:

- 13 1. For an order certifying the proposed Classes;
- 14 2. For an order appointing Plaintiff as representative of the Classes;
- 15 3. For an order appointing counsel for Plaintiff as counsel for the Classes;
- 16 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
17 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2,
18 1197, and 1198;
- 19 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
20 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
- 21 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
22 special damages according to proof pursuant to Labor Code §§ 204, 226.7, 512, 558, and 1198;
- 23 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
24 special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;
- 25 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
26 226, *et seq.*;
- 27 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
28 Labor Code §§ 201-203;

1 10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and
2 special damages according to proof pursuant to Labor Code §§ 2802 and 2804;

3 11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the
4 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
5 practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;

6 12. Upon the Ninth Cause of Action, for any and all civil penalties available to Plaintiff,
7 the State of California, and other aggrieved employees under the Private Attorneys General Act,
8 as well as injunctive relief under the Private Attorneys General Act prohibiting Defendants from
9 engaging in the unlawful conduct alleged herein;

10 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
11 Cal. Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
12 California Constitution;

13 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
14 226(e), 1194 *et seq.*, 2699(k), 2802(c), Code of Civil Procedure § 1021.5, and all other applicable
15 statutes; and

16 15. For such other and further relief the Court may deem just and proper.

17 Date: March 25, 2025

MARQUEE LAW GROUP, APC

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19 

20 Tuvia Korobkin
21 Attorneys for Plaintiff

22 **DEMAND FOR JURY TRIAL**

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

24
25 Date: March 25, 2025

MARQUEE LAW GROUP, APC

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28 Tuvia Korobkin
Attorneys for Plaintiff

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PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 9100 Wilshire Boulevard, Suite 445, East Tower, Beverly Hills, California 90212.

On March 25, 2025 I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on all interested parties in this action by transmitting a true copy of the document(s) described above, addressed as follows:

SEE ATTACHED SERVICE LIST

- () **BY MAIL** as follows: I am “readily familiar” with the firm’s practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Beverly Hills, California.
- () **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand to the above addressee(s).
- () **BY OVERNIGHT COURIER:** I am “readily familiar” with the firm’s practice of collecting and processing overnight deliveries, which includes depositing such packages in a receptacle used exclusively for overnight deliveries. The packages were deposited before the regular pickup time and marked accordingly for delivery the next business day.
- (X) **BY ELECTRONIC TRANSMISSION:** Participants in this case were served electronically to the address of the recipient(s) as set forth below. I am readily familiar with the Code of Civil Procedure and California Rules of Court for electronic service and this document/these documents were duly served electronically in accordance with said rules and regulations on the date stated above, and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 25, 2025 at Beverly Hills, California.

Kimberly Gomez Garcia
Kimberly Gomez Garcia

SERVICE LIST:

O'Hagan Meyer c/o Sumy Kim, Esq One Embarcadero Suite 2100 San Francisco, CA 94111 E: <i>skim@ohaganmeyer.com</i> ; <i>bbarragan@ohaganmeyer.com</i>	<i>Attorneys for Defendants NEW PUNCH BOWL SACRAMENTO, LLC</i>
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