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County of Placer
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By: Karlee M Parsons
Deputy Clerk

Attorneys for Plaintiff Lee Allen Cowin, on behalf of himself and all "aggrieved employees"
pursuant to Labor Code § 2698 *et seq.*

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

LEE ALLEN COWIN, individually on behalf
of himself, and on behalf of all similarly
situated individuals,

Plaintiff,

v.

NEKI, INC., a California corporation, d/b/a
PIZZA GUYS, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: S-CV-0049770

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**1. FAILURE TO PAY ALL WAGES DUE
(LABOR CODE §§ 510, 1194, AND 1194.2)**

**2. FAILURE TO PAY ALL GRATUITIES
(LABOR CODE § 351)**

**3. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 5-2001)**

**4. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 5-2001)**

**5. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES
(LABOR CODE § 2802)**

**6. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**7. FAILURE TO PAY WAGES DUE AT
SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**

8. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

9. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 351, 510, 512, 1194, AND 2802, AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558

DEMAND FOR JURY TRIAL

Plaintiff LEE ALLEN COWIN (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004, complains of of NEKI, INC., a California corporation, d/b/a PIZZA GUYS, (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other employees who work or formerly worked for Defendants within the State of California.

2. Since at least October 12, 2018 and continuing to the present (the “liability period”) Defendants have had a consistent policy of failing to pay all gratuities, minimum wages, and overtime wages due to Class Members (as defined below), provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; reimburse all business-related expenses due to Class Members; provide accurately itemized wage statements to Class Members; and to timely pay wages during employment and upon separation of employment to Class Members.

3. Plaintiff, on behalf of himself and members of the Class, bring this action pursuant to Labor Code §§ 201, 202, 204, 210, 226(a), 226.7, 351, 510, 512, 1194, 1194.2, and 2802, seeking compensation for all unpaid minimum and overtime wages, gratuities, premium meal and rest period wages, unpaid business-related expenses, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and members of Class and pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages, expense reimbursement, and gratuities due to Class Members.

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties and wages for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Class Members in Placer County, California.

II.

TOLLING AGREEMENT

7. Plaintiff and Defendants entered into an agreement to toll the statute of limitations, pursuant to California Code of Civil Procedure § 360.5, from October 12, 2022 through and including February 1, 2023. As such, all periods of limitation (statutory or otherwise) affecting any and all claims or causes of actions which Plaintiff may have against Defendants have been tolled between October 12, 2022 and February 1, 2023.

III.

PARTIES

A. Plaintiff

8. Plaintiff LEE ALLEN COWIN was employed by Defendants from October 2014 through March 2022 in Placer County, California.

9. During his work with Defendants, Plaintiff was:

- a. Willfully denied the payment of all wages during the course of employment, including all minimum and overtime wages;
- b. Willfully denied the payment of all gratuities during the course of employment;
- c. Willfully denied rest periods or compensation in lieu thereof;
- d. Willfully denied meal periods or compensation in lieu thereof;
- e. Willfully denied reimbursement of all business-related expenses;

- f. Willfully denied accurately itemized wage statements; and
- g. Denied the timely payment of wages upon separation of their employment.

B. Defendants

10. Defendant NEKI, INC. is a California corporation doing business as PIZZA GUYS that employed Plaintiff and Class Members throughout the State of California, including Placer County, California.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

IV.

CLASS ACTION ALLEGATIONS

14. Plaintiff brings this action on behalf of himself, and all others similarly situated as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the following class composed of and defined as follows:

THE CLASS

All non-exempt, hourly employees who have, or continue to, work for Defendants in California from October 12, 2018 through the present.

1 15. Plaintiff reserve the right under Rule 3.765, California Rules of Court, to amend or
2 modify this class description with greater specificity or further division into subclasses or limitation
3 to particular issues.

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

7 **A. Numerosity**

8 17. The potential members of the Class as defined are so numerous that joinder of all Class
9 Members is impracticable. While the precise number of members of the Class has not been
10 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 currently employ, and during the relevant time periods employed, over 75 persons in the State of
12 California who fall within the Class definition.

13 18. Accounting for employee turnover during the relevant period necessarily increases this
14 number. Plaintiff alleges Defendants' employment records would provide information as to the
15 number and location of members of the Class. Joinder of members of the Class is not practicable.

16 **B. Commonality**

17 19. There are questions of law and fact common to the Class that predominate over any
18 questions affecting only individual Class Members. These common questions of law and fact include,
19 without limitation:

- 20 a. Whether Plaintiff and the Class were denied the payment of all minimum and
21 overtime wages due during the course of employment, in violation of Labor
22 Code §§ 510, 1194, and 1194.2;
- 23 b. Whether Plaintiff and the Class were denied the payment of all gratuities
24 during the course of employment, in violation of Labor Code § 351;
- 25 c. Whether Defendants failed to properly provide rest periods or compensation in
26 lieu thereof to Plaintiff and Class Members, in violation of Labor Code § 226.7,
27 and IWC Wage Order 5-2001;

- 1 d. Whether Defendants failed to properly provide meal periods or compensation
2 in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§
3 226.7 and 512, and IWC Wage Order 5-2001;
- 4 e. Whether Defendants failed to reimburse all business-related expenses to
5 Plaintiff and Class Members, in violation of Labor Code § 2802;
- 6 f. Whether Defendants failed to provide Plaintiff and members of the Class with
7 accurately itemized wage statements, in accordance with Labor Code § 226(a)
8 and (e);
- 9 g. Whether Defendants failed to timely pay Plaintiff and Class Members all
10 wages due and owing at the separation of their employment, in violation of
11 Labor Code §§ 201-203; and
- 12 h. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
13 to Business & Professions Code § 17200 *et seq.*

14 **C. Typicality**

15 20. The claims of the named Plaintiff are typical of the claims of members of the Class.
16 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
17 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
18 of law, and statutes as alleged herein.

19 **D. Adequacy of Representation**

20 21. Plaintiff will fairly and adequately represent and protect the interests of members of
21 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
22 employment class actions.

23 **E. Superiority of Class Action**

24 22. A class action is superior to other available means for the fair and efficient adjudication
25 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
26 questions of law and fact common to the proposed Class predominate over any questions affecting
27 only individual members of the proposed Class. Each member of the proposed Class has been
28 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

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

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL MINIMUM AND OVERTIME WAGES

(LABOR CODE §§ 510, 1194, AND 1194.2)

24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25. Defendants failed to pay Plaintiff and non-exempt Aggrieved Employees all minimum and overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 1194, and 1194.2. Plaintiff and Class Members worked off-the-clock, without compensation: they were not paid for time spent performing pre-shift and post-shift activities, such as preparing the restaurant for the day's work and making deliveries on their way home from work after clocking out for their shift. Defendants would also contact Plaintiff and Class Members on their personal cell phones while they were off-the-clock. These failures to pay all minimum and overtime wages due constitute violations of Labor Code §§ 510, 1194, and 1194.2.

26. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due, Plaintiff and Class members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, liquidated damages, plus interests thereon, attorneys' fees, and costs pursuant to Labor Code §§ 1194 and 1194.2.

Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

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1 VI.

2 SECOND CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PAY ALL WAGES AND GRATUITIES

5 (LABOR CODE § 351)

6 27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set
7 forth herein.

8 28. Defendants failed to pay Plaintiff and Class Members all gratuities due, in violation of
9 Labor Code § 351.

10 29. During the liability period, Defendants have failed to pay Plaintiff and Class Members
11 all gratuities due, in violation of Labor Code § 351. Plaintiff and Class Members were forced to share
12 their tips with Defendants (including supervisors, managers, and others not legally entitled to share
13 tips), in violation of Labor Code § 351, which states, in pertinent part, that “[n]o employer or agent
14 shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee
15 by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require
16 an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages
17 due the employee from the employer.”

18 30. As a result of the unlawful acts of Defendants in willfully failing to pay all gratuities
19 due, Plaintiff and Class members have been deprived of gratuities in amounts to be determined at
20 trial, and are entitled to restitution and recovery of such amounts, plus interests thereon, attorneys’
21 fees, and costs pursuant to Labor Code § 351.

22 Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

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VII.

THIRD CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 5-2001)

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 5-2001.

33. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. Plaintiff and Class Members were simply denied and not authorized to take their legally entitled rest periods and were never paid premium wages at the proper rate of pay for missed rest periods. This violates Labor Code § 226.7 and IWC Wage Order 5-2001.

34. Pursuant to Labor Code § 226.7 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

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VIII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7 AND 512 AND IWC WAGE ORDER 5-2001)

35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512 and IWC Wage Order 5-2001.

37. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. Plaintiff and Class Members were frequently denied the ability to take a meal period altogether and were never paid any meal period premium wages. This violates Labor Code §§ 226.7 and 512.

38. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001, Plaintiff seek the payment of all meal period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

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IX.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set forth herein.

40. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties, in violation of Labor Code § 2802, including, but not limited to, the use of their personal cell phones, purchase of a uniform with Defendants' logo, as well as expenses incurred to operate their personal automobiles, such as gas, maintenance, and insurance. Labor Code § 2802 requires that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, and Defendants' failure to do so has violated Labor Code § 2802.

41. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

42. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

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X.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

EMPLOYEE WAGE STATEMENT PROVISIONS

(LABOR CODE § 226(a), (e))

43. Plaintiff incorporates paragraphs 1 through 42 of this Complaint as though fully set forth herein.

44. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

45. Defendants failed to issue Plaintiff and members of the Class wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members were not paid all wages due, including minimum and overtime wages, gratuities, and premium wages for unauthorized meal and rest periods, as stated above. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

46. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and members of the Class have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and members of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

XI.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)

47. Plaintiff incorporates paragraphs 1 through 46 of this Complaint as though fully set forth herein.

48. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

49. Defendants paid Plaintiff and Class Members their final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class Members were not paid all wages due and owing throughout the course of their employment, including all premium wages for missed and denied meal and rest periods, as detailed above. Consequently, at the time of their separation from employment with Defendants, they were not paid all final wages due

1 and owing for the entirety of their employment. When Plaintiff separated from his employment, he
2 was not issued his final wages within 72 hours of his separation—instead, he was issued his final
3 wages many days later. Plaintiff alleges that Defendants maintained a policy to untimely pay final
4 wages to their former employees.

5 50. More than 30 days have passed since Plaintiff and Class Members have left
6 Defendants' employ.

7 51. As a consequence of Defendants' willful conduct in not paying wages owed timely
8 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
9 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
10 employment.

11 Wherefore, Plaintiff and the class he seeks to represent request relief as described below.

12 **XII.**

13 **EIGHTH CAUSE OF ACTION**

14 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

15 **UNFAIR COMPETITION PURSUANT TO**

16 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

17 52. Plaintiff incorporates paragraphs 1 through 51 of this Complaint as though fully set
18 forth herein.

19 53. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and
20 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
21 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
22 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
23 and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest
24 within the meaning of Code of Civil Procedure § 1021.5.

25 54. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
26 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
27 appropriate equitable relief.
28

1 55. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
2 practices.

3 56. Wage and hour laws express fundamental public policies. Properly providing
4 employees with all wages and expense reimbursement due is a fundamental public policy of this State
5 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
6 vigorously minimum labor standards, to ensure that employees are not required or permitted to work
7 under substandard and unlawful conditions, and to protect law-abiding employers and its employees
8 from competitors who lower their costs by failing to comply with minimum labor standards.

9 57. Defendants have violated statutes and public policies. Through the conduct alleged
10 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
11 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
12 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
13 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
14 guaranteed to all employees under law.

15 58. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
16 §17200 *et seq.* of the Business & Professions Code.

17 59. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
18 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
19 17200 *et seq.* of the Business & Professions Code.

20 60. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
21 similarly situated have been damaged in a sum as may be proven.

22 61. Unless restrained by this Court, Defendants will continue to engage in the unlawful
23 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
24 should make such orders or judgments, including the appointment of a receiver, as may be necessary
25 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
26 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
27 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the class to
28 the money Defendants have unlawfully failed to pay.

XIII.

NINTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 351, 510, 512, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 210, 226.3, AND 558**

62. Plaintiff incorporates paragraphs 1 through 61 of this Complaint as though fully set forth herein.

63. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.* Furthermore, and in addition to the above allegations, Defendants failed to timely pay Plaintiff and other California employees who currently work or formerly worked for Defendants (“Aggrieved Employees”) all wages due during their employment, in violation of Labor Code §§ 204 and 210. Defendants paid Plaintiff and other Aggrieved Employees on a semi-monthly basis, but sometimes failed to issue them all their wages within seven and/or ten calendar days of the conclusion of the payroll period, as required by Labor Code § 204(a) and (d); instead, Plaintiff and other Aggrieved Employees were paid eleven or more days after the close of each pay period. This subjects Defendants to penalties as authorized by Labor Code § 210.

64. For each such violation, Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 351, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 210, 226.3, and 558.

65. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

66. On July 25, 2022 and August 8, 2022, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of July 25, 2022 or August 8, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff pray for the following relief:

1. For compensatory damages pursuant to Labor Code § 351 in the amount of all unpaid gratuities due to Plaintiff and Class Members;
2. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid wages due to Plaintiff and Class Members;
3. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
4. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
6. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class;
7. An award of prejudgment and post-judgment interest;
8. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
9. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and Aggrieved Employees;
10. An award providing for payment of costs of suit pursuant to Labor Code §§ 226, 1194, and 2699(g)(1) and other applicable law;

1 11. An award of attorneys' fees pursuant to Labor Code §§ 226, 1194, and 2699(g)(1) and
2 other applicable law; and

3 12. Such other and further relief as this Court may deem just and proper.

4 Dated: January 19, 2023

Respectfully submitted,

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6 GAINES & GAINES
A Professional Law Corporation

7
8 By: Daniel F. Gaines
9 DANIEL F. GAINES
EVAN S. GAINES
10 Attorney for Plaintiff

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

13 Dated: January 19, 2023

Respectfully submitted,

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15 GAINES & GAINES
A Professional Law Corporation

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17 By: Daniel F. Gaines
18 DANIEL F. GAINES
EVAN S. GAINES
19 Attorney for Plaintiff
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